

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**April 28, 2005**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, April 28, 2005, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bill Johnson (in @ 1:35); Bud Hentzen; Ronald Marnell; Elizabeth Bishop; M.S. Mitchell; Denise Sherman; Gary K. Gibbs; and Frank Garofalo. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; David Barber, Advanced Plans Manager; and Rose Simmering, Recording Secretary.

#### **❖ SUBDIVISION ITEMS**

##### **1. Consideration of Subdivision Committee recommendations**

##### **1-1. SUB2005-29- Final Plat – NEWMAN UNIVERSITY SECOND ADDITION, located on the south side of Kellogg and west of Meridian.**

**NOTE:** This is a replat of a portion of Crystal Addition, Martinson's 5th Addition, and College Green Addition. It involves the vacation and relocation of McCormick.

#### **STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D. **City Engineering** has requested a temporary road easement for McCormick to be established by separate instrument until the improvements to the new alignment of McCormick are completed.
- E. "Lots, Blocks, Reserves and Streets" shall be referenced in the plat's text.
- F. The final plat tracing shall state in the plat's text the purposes of the proposed reserves as well as the ownership and maintenance responsibilities.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. The 20' drainage and utility easements on Lots 1 & 2, Block 1 need to be located.
- J. The property line common to Lots 1 & 2, Block 1 on the north end needs dimensions.
- K. The reference to the condemnation case on the north should be legible.
- L. The bearing on the south line of Lots 1 & 2, Block 1 in the measured half street right-of-way needs to be shown.
- M. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- N. The Applicant has platted a 20-ft building setback along McCormick which represents an adjustment of the Zoning Code standard of 25 feet for the portions of the site zoned SF-5, Single-Family District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission. **The modification has been approved.**
- O. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.

- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy has requested temporary easements for various existing utilities.**
- Y. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve subject staff recommendations.

**MITCHELL** moved, **MCKAY** seconded the motion, and it carried 12-0.

1-2. **SUB2005-36- One-Step Final Plat – ALBERT FARM ADDITION, located on the southeast corner of Central and 151st Street West.**

**NOTE:** This site is located in the County within three miles of Wichita's boundary. It is in an area designated as "2030 Urban Service Area" by the Wichita-Sedgwick County Comprehensive Plan. The site has been approved for a zone change (ZON 2001-71) from SF-20, Single-Family Residential to LC, Limited Commercial, NR, Neighborhood Retail, NO, Neighborhood Office, and SF-5, Single-Family Residential. The Albert Farm Community Unit Plan (CUP 2001-44, DP-257) was also approved for this site. The site is located within the 100-year floodplain.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan and flood study are needed. Additional easements and minimum pads may be needed based on drainage plan. Applicant needs to remove existing terraces and show existing drainage structures on plat. City Engineering has requested a copy of the drainage plan.**
- D. In accordance with the CUP approval, the applicant shall guarantee the following transportation improvements:
  - 1. A raised median on Central 300-ft from the intersection, and a center left-turn lane on Central for the remaining openings;
  - 2. A raised median on 151<sup>st</sup> Street from the intersection to south of the first entrance, and a center left-turn lane on 151<sup>st</sup> Street West between the first and second entrances;
  - 3. A continuous accel/decel lane with a beginning taper from the southern property line on 151<sup>st</sup> Street West extending along the property and tapering after the easternmost drive on Central;
  - 4. Proportionate share of paving (as a permanent improvement) of Central and 151<sup>st</sup> Street West to arterial standards;

5. 25 percent of the cost of signalization of the intersection of when warranted (this is based on the expectation that this development will generate approximately half of the commercial traffic at this intersection, and the total commercial traffic will be approximately half of the total daily traffic on the two arterials).
- E. **County Engineering** has requested the major street right-of-way indicated on the plat be adjusted along both arterials. The Access Management Regulations requires a major street intersection to include a 75-ft half-street right-of-way measured 250 feet from the centerline of the intersecting arterials and a tapered length of 100 feet. An additional 25-ft x 25-ft corner clip is needed at the intersection.
- F. Access controls have been platted in accordance with the CUP approval. The plat proposes four access openings along Central, including three joint openings, and two joint openings along 151st St West. **The westernmost opening along Central needs to be a joint opening between Lots 5 and 6.**
- G. The joint access openings shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveway within the easement should also be addressed by the text of the instrument.
- H. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- I. The Applicant should contact MAPD regarding the need for a CUP adjustment as the right-of-way denoted on the CUP does not correspond with the right-of-way being platted, and the requested access controls on the plat do not correspond with those imposed by the CUP. In addition, provision 11 of the CUP should read "...in accordance with the appropriate fire code."
- J. **Sedgwick County Fire Department** advises that all access drives shall be in accordance with Sedgwick County Service Drive Code.
- K. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- L. The final plat tracing shall state in the plat's text the ownership and maintenance responsibilities of the proposed reserve.
- M. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- N. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- O. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of Albert Farm Community Unit Plan (CUP 2001-44, DP-257).
- P. The wall easement shall be referenced in the plat's text.
- Q. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- R. "Lots, a Block and a Reserve" shall be referenced in the plat's text.
- S. The Applicant needs to verify the location of the pipeline easement indicated in the platting binder. The easement shall be shown if encumbering this plat, or verification provided that it is off-site or has been released.
- T. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- W. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

- Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- Z. Perimeter closure computations shall be submitted with the final plat tracing.
- AA. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- BB. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- CC. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve subject staff recommendations.

**MITCHELL** moved, **MCKAY** seconded the motion, and it carried 12-0.

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1-3. **SUB2005-38- One-Step Final Plat – LANDFILL MANAGEMENT ADDITION, located on the south side of MacArthur Road, east of the Kansas Turnpike.**

**NOTE:** This is an unplatted site located within the City.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **An off-site drainage agreement is needed.**
- D. **Traffic Engineering** has requested the dedication of access controls be defined along MacArthur Road in accordance with the site plan. The plat denotes one opening along MacArthur.
- E. A restrictive covenant or agreement shall be submitted that permits future cross-lot access with the abutting property owner to the east.
- F. **Traffic Engineering** has requested the dedication of additional right-of-way along MacArthur to conform with the 60-ft half-street right-of-way required by the Access Management Regulations. **The Subdivision Committee has approved the 60-ft right-of-way to be measured from the centerline of existing MacArthur Road.**
- G. A benchmark elevation needs to be corrected.
- H. In the legal description, "263.03" needs to be changed to "213.5"
- I. A Block shall be designated on the face of the plat and referenced in the plat's text.
- J. The MAPC signature block needs to reference "John L. Schlegel, Secretary".
- K. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City of Wichita.
- L. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- M. The recording information for all pipeline easements shall be indicated on the face of the plat.
- N. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.

- O. The platlor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve subject staff recommendations.

**MITCHELL** moved, **MCKAY** seconded the motion, and it carried 12-0.

1-4. **SUB2005-41- One-Step Final Plat – REGENCY PARK THIRD ADDITION, located south of 29th Street North and west of Greenwich Road.**

**NOTE:** This is a replat of a portion of Lots 8 and 9, Block 1, Regency Park Addition. A Protective Overlay (P-O #13) was also approved for this site addressing uses, screening, signage, building height and setbacks. The site is located within the 100-year floodplain.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. **The drainage plan has been approved. Minimum pad is needed for Lots 2 and 3.**
- D. The Applicant shall guarantee the paving of the proposed street to the business/industrial street standard.
- E. The platlor's text shall delete reference to access controls.
- F. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."
- G. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- H. A PO Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved PO and its special conditions for development on this property.

- I. **GIS** needs to comment on the plat's street names. **26th St. Cir needs to be changed to 26th Cir N.**
- J. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- K. Applicant needs to denote lot dimensions around east cul-de-sac.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve subject staff recommendations.

**MITCHELL** moved, **MCKAY** seconded the motion, and it carried 12-0.

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❖ **PUBLIC HEARINGS – VACATION ITEMS**

**2-1. VAC2004-57 – Request to Vacate a Portion of Dedicated Public Right-of-Way.**

**APPLICANTS:**

Marvin & Debra Hamlin

**LEGAL DESCRIPTION:**

That portion of the Oliver Street right-of-way (ROW) abutting Tracts RI-467-3 & RI-467-5A on its west side, 63<sup>rd</sup> Street South on its north side, the AT & SF Railroad ROW on its east side and a new alignment of Oliver Street as established by Condemnation Case #02C-4347, on its south side. This portion of Oliver Street, is larger section of Oliver Street that was established by petition as recorded in Road #299 Reference, Road #827-N3/4X – 634 3/4-W1/2 30, Wichita, Sedgwick County, Kansas

**LOCATION:**

Generally west of State Highway K-15 and south of 63<sup>rd</sup> Street South, in Sedgwick County (BoCC District #5)

**REASON FOR REQUEST:**

To revert to private property as this section of Oliver Street has been closed and replaced

**CURRENT ZONING:**

Site is public ROW. Properties west and south of the site are zoned "RR" Rural Residential. Property north of the site is zoned "GC" General Commercial. Property east of the site is Railroad ROW and State Highway K-15. The Derby City limits are east of State Highway K-15.

The applicants are requesting consideration to vacate the closed portion of Oliver Street that intersects 63<sup>rd</sup> Street South on its north side and a newer section of Oliver Street on its south side. The County has closed this portion of Oliver Street ROW and replaced it with the realigned Oliver Street ROW, which is located approximately 500-feet west of the proposed vacated ROW. The realigned ROW provides access to properties south of 63<sup>rd</sup> Street South. The proposed vacated ROW abuts the applicant's eastern property line. The applicant's unplatted property is developed as single-family residential. There is drainage that flows from the east under State Highway K-15, and then runs west under the proposed vacated ROW. There are no public utilities in the ROW. Westar and SBC have equipment in the ROW. The ROW is located in the County and just outside the Derby City limits, but within their subdivision jurisdiction. The Derby Planning Commission considered this case at their March 17, 2005 meeting and recommended approval, with the conditions listed below. The Derby City Council considered this case at their April 12, 2005 meeting and recommended approval with the conditions listed below. Questions regarding procedure and jurisdiction should be directed to the Sedgwick County Law Department.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of this portion of Oliver Street ROW, with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Derby Reporter, of notice of this vacation proceeding one time March 3, 2005 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portions of the street ROW and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the Oliver Street ROW, described in the petition should be approved with conditions:
- (1) Vacate the portion of the Oliver Street ROW, as described.
  - (2) Per the recommendation of the franchised utilities, the County Engineer and the City of Derby's Engineer, retain a portion of the vacated Oliver Street ROW as a utility/drainage easement where public or franchised utilities are located or will be located, or retain the whole vacated ROW as a utility/drainage easement. Provide a metes and bounds description of that portion of the vacated ROW retained as an utility/drainage easement, if the whole vacated ROW is not retained as a drainage/utility easement.
  - (3) Per the recommendation of the franchised utilities, the County Engineer and the City of Derby's Engineer, provide any necessary dedications of easements for drainage/utilities.
  - (4) Provide a restrictive covenant binding and tying the vacated portion of Oliver Street ROW to the applicant's property.
  - (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
  - (6) All improvements shall be according to County Standards, including any driveways from private property onto public ROW.
  - (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

- (1) Vacate the portion of the Oliver Street ROW, as described.
- (2) Per the recommendation of the franchised utilities, the County Engineer and the City of Derby's Engineer, retain a portion of the vacated Oliver Street ROW as a utility/drainage easement where public or franchised utilities are located or will be located, or retain the whole vacated ROW as a utility/drainage easement. Provide a metes and bounds description of that portion of the vacated ROW retained as an utility/drainage easement, if the whole vacated ROW is not retained as an utility/drainage easement.
- (3) Per the recommendation of the franchised utilities, the County Engineer and the City of Derby's Engineer, provide any necessary dedications of easements for drainage/utilities.
- (4) Provide a restrictive covenant binding and tying the vacated portion of Oliver Street ROW to the applicant's property.
- (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.

- (6) All improvements shall be according to County Standards, including any driveways from private property onto public ROW.
- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

GAROFALO Is there something wrong with this map or the wording here, where is Oliver?

LONGNECKER The portion of right-of-way that is being proposed for vacation is Oliver Street, (pointing) here. What the aerial doesn't show but the location map does show, is the newly realigned section of Oliver here (pointing), which is in place and being used. The county has shut this old section of Oliver off with barricades. The abutting property owner wants to vacate it to prevent traffic from coming up it and then finding that they cannot use it and then use his drive to turn around in. Oliver has been realigned and it is now further away west of the K-15, railroad and the 63rd Street intersection.

**MOTION:** To approve subject staff recommendations.

**MARNELL** moved, **DOWNING** seconded the motion, and it carried 13-0.

**2-2. VAC2005-14 – Request to Vacate a Portion of Public Right-of-Way.**

**OWNER/APPLICANT:** Hillside Christian Church

**AGENT:** Hanney & Associates Architects c/o Martin Hanney

**LEGAL DESCRIPTION:** A portion of the platted 30-foot front setback on Lot 1, Block 1, The Brookhollow Fourth Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located midway between Rock Road and Webb Road, more specifically on the north side of Douglas Avenue, between Tara Lane and Langford Lane (WCC District II)

**REASON FOR REQUEST:** Construct a porte cochere

**CURRENT ZONING:** Subject property and all abutting north and east properties and adjacent south properties are zoned SF-5" Single-family Residential. Adjacent west property is zoned "MF-18".

The applicant proposes to vacate a portion of the north 10-feet of the platted 30-foot front setback to construct a porte cochere. This will provide a roof projecting over the church driveway, where it goes in front of the entrance to the church, which will provide shelter for members getting in and out their vehicles to get in and out of the church. The UZC's front setback for the "SF-5" zoning district is 25-feet. If the front setback was not platted the applicant could have applied for an Administrative Adjustment that would allow the setback to be reduced by 20%, i.e. reducing it to 20-feet. There is a single-family residence abutting the east side of the site, which has a platted 15-foot street side yard set back. There is an approximately 270-foot wide drainage easement west of the site. There are no franchised utilities, sewer or water lines within the platted setback, or are there any platted easements. The Brookhollow Fourth Addition was recorded with the Register of Deeds on October 6, 1975.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted front setback as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
  1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time April 7, 2005 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portions of the platted front setback and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted front setback, described in the petition should be approved with conditions:
  - (1) Vacate only that portion of the platted setback where there is an encroachment. The encroachment can be no deeper than 10-feet into the platted 30-foot setback
  - (2) Provide staff with accurate legal descriptions of the proposed portion of the vacated setback.
  - (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.



- (4) All improvements shall be according to City Standards.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the platted setback where there is an encroachment. The encroachment can be no deeper than 10-feet into the platted 30-foot setback
- (2) Provide staff with accurate legal descriptions of the proposed portion of the vacated setback.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
- (4) All improvements shall be according to City Standards.
- (5) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject staff recommendations.

**MARNELL** moved, **DOWNING** seconded the motion, and it carried 13-0.

**2-3. VAC2005-05 – Request to Vacate a Portion of Platted Street Right-of-Way.**

**APPLICANTS: AGENT**

CAP Partnership ABC LLC  
Doug Maryott (Agent)

**LEGAL DESCRIPTION:**

That portion of Heather Road as originally platted between Lots 7 & 6, the Ruth Addition, Wichita, Sedgwick County, Kansas, minus that portion of Heather Road acquired for improvements to Kellogg Avenue

**LOCATION:**

Generally located east of Rock Road and north of Kellogg Drive  
(Council District II)

**REASON FOR REQUEST:**

Revert to private uses

**CURRENT ZONING:**

The site is public right-of-way. The abutting eastern and western properties are zoned "LC" Limited Commercial, the adjacent northern properties are zoned "SF-5" Single-family residential and the southern property is public street ROW, Kellogg Drive and Kellogg Avenue

The applicant is requesting vacation of the portion of Heather Road, as previously described. The remaining portion of ROW intersects Kellogg Drive on its south side and ends approximately 140-feet short of its intersection with Peach Tree Lane on its north end. The applicants own the western and eastern properties, abutting the proposed vacated portion of Heather Road. Vacating this portion of Heather Road would make Heather Road a 140-foot long dead end street, which it is for all practical purposes as Public Works has erected a barricade in the general area of the vacation request. The remaining northern dead end portion is bound by a single-family residences on its west and east sides; Lot 6, Block 6, & Lot 1, Block 7, all in the Bonnie Brae Addition, which is where this portion of Heather ROW was platted. The Bonnie Brae Addition recorded with the Register of Deeds June 18, 1953. Vacating this portion of Heather Road would also seal off traffic coming off the Kellogg Drive commercial corridor into the single-family residential development north of it. There are franchised utilities, sewer and water lines in the ROW. The portion of the Heather Road ROW that is proposed to be vacated was dedicated on the Ruth Addition, which was recorded with the Register of Deeds July 15, 1959.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the Heather Road ROW, as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time March 3, 2005 which was at least 20 days prior to this public hearing.

2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted street ROW and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the platted Heather Road ROW described in the petition should be approved with conditions:
1. Retain the vacated Heather Road ROW as a utility easement where public or franchised utilities are located or retain the whole vacated ROW as a utility easement. Provide a metes and bounds description of that portion of the vacated ROW retain as a utility easement, if the whole vacated ROW is not retained as a utility easement.
  2. Vacate the platted 20-foot street side yard setback and what remains of the platted 50-foot front yard setback on Lot 1, McDonald's First Addition, which was originally platted as Lot 7, the Ruth Addition.
  3. Provide a guarantee for closure of the return(s) and continuation of the curbs.
  4. If needed, provide dedication of complete access control, as recommended by the Traffic Engineer.
  5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
  6. All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
  7. Per the UZC, solid screening shall be provided between the "LC" properties and the "SF-5" properties.
  8. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Retain the vacated Heather Road ROW as a utility easement where public or franchised utilities are located or retain the whole vacated ROW as a utility easement. Provide a metes and bounds description of that portion of the vacated ROW retain as a utility easement, if the whole vacated ROW is not retained as a utility easement.
2. Vacate the platted 20-foot street side yard setback and what remains of the platted 50-foot front yard setback on Lot 1, McDonald's First Addition, which was originally platted as Lot 7, the Ruth Addition.
3. Provide a guarantee for closure of the return(s) and continuation of the curbs.
4. If needed, provide dedication of complete access control, as recommended by the Traffic Engineer.
5. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
6. All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
7. Per the UZC, solid screening shall be provided between the "LC" properties and the "SF-5" properties.
8. Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

DUNLAP Commissioners we have a request that Agenda Item 2-3, VAC2005-05, be deferred indefinitely.

**MOTION:** Agenda Item 2-3, VAC2005-05, be deferred indefinitely.

**DUNLAP** moved, **WARNER** seconded the motion, and it carried 13-0.

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❖ **PUBLIC HEARING ITEMS**

3. **Case No.: DR2003-16** – Request Adoption of proposed amendments to the Wichita-Sedgwick County Comprehensive Plan, adopted in 1993 and amended in 1996, 2000, and 2002

**Background:**

Since February 2003, MAPD staff has been working with the Advance Plans Committee on updating the Wichita-Sedgwick County Comprehensive Plan. This Plan has jurisdiction over the City of Wichita and unincorporated Sedgwick County. Using revised 2010 and 2030 population/employment projections for the Wichita urbanized area based upon Census 2000 baseline data, the Plan update has focused on revising the existing *Wichita Land Use Guide Map, January 2002* and the *Sedgwick County Development Guide Map, January 2002*. It is important to note that the 2030 urban growth areas outlined in the Wichita-Sedgwick County Comprehensive Plan are not prescriptive or binding in nature. They serve only as a reasonable indication as to where future municipal services and corporate limits could likely be extended by the year 2030.

**No significant plan policy changes have been proposed as part of this update to the Comprehensive Plan. Staff feel that the metropolitan-wide "visioneering" initiative currently underway will provide important community direction regarding any major future changes that may be necessary to the current goals and policies of the Comprehensive Plan.**

Analysis:

**2030 Wichita Functional Land Use Guide Map, April 2005 and the Wichita and Small Cities 2030 Urban Growth Areas Map, April 2005.**

**The proposed 2030 Wichita Functional Land Use Guide Map, April 2005 has been reformatted to reflect functional land use categories rather than site-specific, facility-based uses. The final map reflects all new development activity occurring since January 2002 within the City of Wichita.**

**The proposed Wichita and Small Cities 2030 Urban Growth Areas Map, April 2005 has been revised to reflect the following considerations:**

- 1. Municipal annexations that have occurred since 2002.**
- 2. Revised metropolitan-wide population and employment projections completed in March 2004.**
- 3. Necessary adjustments to the Wichita and small city 2030 urban growth areas based upon: municipal political considerations, current growth trends, anticipated population growth, efficient patterns of municipal growth, current infrastructure limitations and capacity for growth, cost effective delivery of future municipal services, and official comprehensive and water/sewer servicing plans of record.**

Comprehensive Plan Policies:

Although no significant plan policy changes are being proposed as part of this update to the Comprehensive Plan, staff have proposed a few new Plan objective and strategy statements to support recent regional collaboration initiatives related to long term municipal water supply, stormwater and floodplain management, and economic development.

**Summary of Public and Community Feedback:**

During 2004, MAPD staff members met with key officials from every city in Sedgwick County to discuss their official comprehensive plan, municipal service extension plans and expectations for future population growth. A series of planning summits were also sponsored in early 2004 by Sedgwick County to help discuss and resolve competing growth issues. A map was prepared by MAPD that eliminated areas of conflict based upon an assessment of which municipalities could most readily, economically and efficiently provide municipal services to the conflict areas. This map was presented to a meeting of the SCAC (Sedgwick County Association of Cities) on September 11, 2004. In consideration of this feedback, the Advance Plans Committee prepared the proposed *Wichita and Small Cities 2030 Urban Growth Areas Map, January 2005*, and the *2030 Wichita Functional Land Use Guide Map, January 2005*, for final public review and comment.

The following events were held to allow final community and public feedback on the proposed amendments to the Comprehensive Plan:

1. Staff mailed a copy of the proposed *Wichita and Small City 2030 Urban Growth Areas Map, January 2005* and the *2030 Wichita Functional Land Use Guide Map, January 2005*, to each township and municipality in Sedgwick County, so that they could provide final written comments to the MAPC. Only the Cities of Bel Aire and Sedgwick responded with written comments (Bel Aire objecting to the proposed amendments, and Sedgwick requesting a meeting to discuss their 2030 urban growth area).
2. A presentation of the proposed Plan amendments was made to the Visioneering Wichita Board on February 14, 2005. The Board was generally supportive of the proposed amendments.
3. A public information meeting was held at the Sedgwick County Extension Building on February 24, 2005, to allow opportunity for the general public to comment on the proposed Plan amendments. A total of 14 people attended the meeting and expressed support for the proposed amendments.
4. A presentation of the proposed Plan amendments was made at a meeting of SCAC (Sedgwick County Association of Cities) held on March 12, 2005. City of Bel Aire representatives indicated that they did not support the proposed Comprehensive Plan update.
5. Presentations of the proposed Plan amendments were made to all six Wichita District Advisory Boards during March and early April 2005. All six District Advisory Boards passed motions recommending approval of the proposed Plan amendments.

The proposed *Wichita and Small Cities 2030 Urban Growth Areas Map, April 2005* and the *2030 Wichita Functional Land Use Guide Map, April 2005* reflects the final assessment of the Advance Plans Committee regarding the realistic capabilities and capacities of municipalities in Sedgwick County to deliver future sanitary sewer and water services, and extend their corporate limits over the next 25 years.

**Recommendation:**

That the Metropolitan Area Planning Commission pass a resolution adopting the proposed April 2005 map and text amendments to the Wichita-Sedgwick County Comprehensive Plan, as outlined in Attachments "A" and "B".

DUNLAP Dave, we recently had a round of elections in the small communities and we have had some changes there, did you feel it necessary to go back and talk to them again after they have had a chance to get to know each other in their own community? For example, Bel Aire had a major change, both in their staff and their elected officials.

BARBER As staff, we feel we have a pretty good handle on the future growth of these small cities based on their existing official Comprehensive Plans, servicing plans, and discussions with senior administrative staff with the respect to their future growth. I guess at this point and time, we don't see any of these recent political changes changing anything that we have before you, recognizing that every year we will be updating this map.

MITCHELL On April 26th I gave Mr. Barber a list of suggestions having mainly to do with the use of the word "growth" as associated with the City of Wichita 2030 urban service area. I would hope that the MAPC would agree with me that those ought to be defined as a "service area" or "urban service area" rather than a "growth area" so that we don't get into this context of setting growth boundaries.

I made the same suggestion for the small cities but Mr. Barber advises me that is probably not appropriate since many of the small cities won't be able to extend their services to the boundaries which they would like control over. So I am willing to compromise if we take the word "growth" out of the phrases that have to do with the City of Wichita 2030 area and make that "service area" or "urban service boundary" and then leave the "growth" in the application for the small cities. I believe he is agreeable to that.

I also had a couple of questions about things that were specifically addressed to phrases in the Comprehensive Plan having to do with water supply. Dave had suggested a regional agency to control and anticipate regional water needs. At one time the South Central Kansas Water Supply Coalition had been used in that context, I still don't know for sure who that is, and unless we find they have a presentation to the MAPC as which we accept their responsibility for controlling the water supply for in this area I don't think that agency or that group of people, or cities, ought to be put in that position. He assures me that this is not the intent, and that the policy approach we take is to look at water supply in a regional way, to which I certainly can't argue.

There is a policy phrase that says we should "Increase natural stormwater infiltration and groundwater recharge". Recently the buzzword with Stormwater Management is "low impact development". There are some good concepts in "low impact development", but I don't want that concept to be used and somebody come back later and say that our Subdivision Regulations need to be revised because they would be in conflict with "low impact development". Such low impact development doesn't like paved streets, or storm sewers, or positive drainage, they want to hold the water in places where I have been trying to get rid of it for years.

BARBER It is ultimately the MAPC's decision about what changes to make at this point in time, but in response to the policy on stormwater infiltration, all the policy says is to support initiatives that will *enhance* infiltration and groundwater recharge. I wouldn't say that it is a prescriptive statement. With respect to the regional water plan, the policy just states that it is important to develop a regional water plan. It doesn't say who should be doing that.

DUNLAP What I hear you saying is that you do not have objection to what Mr. Mitchell is asking?

SCHLEGEL I am not clear on what Commissioner Mitchell is saying, are you objecting to the statements that are in here now? You want some changes made?

MITCHELL No, the way they are written now and if there are no implications of either the Central Kansas Water Supply Coalition being that regional authority which there was in an earlier draft of the plan, and if the infiltration system isn't aimed at making us comply with low impact development standards, then I have no objections to the statements as they are.

SCHLEGEL So you just want assurance that those two things are not happening here?

BARBER That is true, they are not happening.

DUNLAP What about Commissioner Mitchell's growth question?

BARBER That is another issue, I guess it is the MAPC's call as to whether or not the terminology of "urban service area" should be used in terms of the Wichita 2030 Service Area, because in reality that is what it really defines, the 2030 servicing capacity and capability of the City of Wichita, where the same is not necessarily true of all of the other small cities.

MCKAY I would like to follow-up with Commissioner Mitchell's comments. In the Advance Plans meeting we had a presentation by an organization and it was very obvious that they were not organized. I think the fear of the Advance Plans Committee is that organization will become the authority of water supply for this area. There are a number of people in this room today that the gentlemen made his presentation to. I would just like to say that is a very, very, important item as far as the growth of this whole metropolitan area, and I think that ought to be constantly monitored and if nothing else the Advance Plans Committee needs to stay on top of that.

DUNLAP I guess the question on growth, I am having a problem with, we have approved alternative sewer systems and we have had some in some places approved subdivisions where they had private wells and to say "urban service area" implies that we are going to give them sewer and water and that is not necessarily true in the case of Bentley that can't do it. I think we ought to find a way to word it so it fits both of them.

BARBER My question is ... what is Commissioner Mitchell's concerns with "urban growth area"?

MITCHELL "Urban growth area for the City of Wichita", I don't want someone saying that a line on this map is as far as urban development can be permitted for city services extended until after 2030.

BARBER We can't predict where that line will be.

BISHOP I would like a clarification about what is the difference between a "service area" and a "growth area"?

MITCHELL If there where an area outside the lines that area shown on this map that the city can provide services to 15 years from now that they weren't aware of today, I want them to be able to do that and I want that area to be able to development.

BISHOP How would a word change that?

MITCHELL We could then say that subdivision doesn't comply with the Comprehensive Plan.

DUNLAP If we are outside of the defined growth area.

BISHOP That wouldn't stop us from approving it just because it is not in compliance with the Comprehensive Plan. We approve things that aren't in compliance with the Plan every meeting.

DUNLAP Because it is a plan.

SCHLEGEL I would like to call the Commissioners attention to the Purpose and Intent paragraph on the Wichita and Small Cities 2030 Urban Growth Areas Map at the top.

MITCHELL I agree with that purpose and intent.

BARBER That statement is on the map, so I think Commissioner Mitchell's fears are resolved because the map itself has all of those qualifiers on them. Even though we show a line, this text will be on that map to make that clarification.

DUNLAP Anyone in the audience to speak on this item?

**MOTION:** To approve and pass a resolution adoption the proposed April 2005 map and text amendments to the Wichita-Sedgwick County comprehensive Plan, as outlined in Attachments "A" and "B".

**MARNELL** moved, **GAROFALO** seconded the motion.

SCHLEGEL I need to seek clarification, are we making changes to this map?

DUNLAP I did not hear Commissioner Mitchell make a motion.

MITCHELL I am willing to accept the motion that Commissioner Marnell made with the clarification we had.

**MOTION carried (13-0).**

4. **Case No.: CON2005-07** - Richard J. Gronniger (applicant); Robert Kaplan (agent) Request to amend conditions of approval associated with CON2003-32 to substitute a five-strand barbed wire fence for a chain link fence surrounding a sand pit on property described as;

The West Half of the Southwest Quarter of Section 4, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, except the South 220 feet of the North 545 feet of the West 240 feet thereof, and except beginning at the Southwest corner of the Southwest Quarter (SW/4), thence North 120 feet, thence Northeasterly 1,364.80 feet to the East line of the West Half of the Southwest Quarter; thence South 400 feet to the Southeast corner of said W/2 SW/4; thence West 1,333.33 feet beginning. Generally located South of 73rd Street North, 3/4 mile west of Ridge Road.

#### **MAPC DEFERRED April 14, 2005**

**BACKGROUND:** On September 9, 2003, the Metropolitan Area Planning Commission (MAPC) approved a request (CON2003-32) to allow sand and gravel extraction on a 17.33-acre tract that is part of a larger ownership of 71 acres located approximately ¾ mile west of Ridge Road, south of 73<sup>rd</sup> Street North. The 17.33-acre extraction area is located roughly in the southern one-third of the larger 71-acre tract. A 14.9-acre lake is to be created by the extraction of sand and gravel over an eight-year time period that began with the MAPC approval. One of the conditions of approval required the applicant to comply with all the Supplemental Use Regulations regarding sand and gravel extraction contained in Section III.D.6.gg of the *Unified Zoning Code*.

One of the Supplemental Use Regulations, gg.(4), requires the installation of a minimum 60-inch high fence adjacent to the perimeter of the application area. Three types of fencing materials are permitted: a 48-inch high or higher chain link fence with three or more strands of barbed wire; or a 48-inch high or higher solid metal or solid masonry fence with three or more strands of barbed wire; or a 48-inch or higher wood fence that may have cracks or openings not in excess of five percent of the area of such fence, with three or more strands of barbed wire.

The applicant is requesting a waiver of the aforementioned fencing standards; they desire to use new and existing multi-strand barbed wire fencing in place of the chain link, metal, masonry or wood fencing called for by the code. The applicant indicates that there is an existing barbed wire fence enclosing the larger 71-acre site along the east, south and west sides. To close in the northern perimeter, a new proposed five-strand barbed wire fence could be installed at one of two locations – running east to west along the south side of 73<sup>rd</sup> Street North where the applicant's property fronts 73<sup>rd</sup> Street or further south, approximately 1,250 feet south of 73<sup>rd</sup> Street north, running east to west with a jog in the middle. On the eastern end the fence would extend south along the 17-acre extraction area's eastern side to tie in with an existing perimeter fence. (See attached site plans.) With the first option, the

applicant's entire 71-acres site would be enclosed; with the second option the 17.33-acre sand plant and the excavation area located on the southern portion of the site would be enclosed.

The Unified Zoning Code permits the governing body to waive or modify Supplemental Use Regulation standards. The MAPC may make recommendations regarding these standards, however they cannot waive or modify them. The governing body did not hear the 2003 Conditional Use request, as there were not any protests or appeals filed. The applicant thought that the fencing standards had been modified as a result of the 2003 MAPC approval, and moved ahead with the project; obtaining all required permits and complying with all requirements, other than the fencing. Apparently, complaints regarding truck traffic and the condition of 73<sup>rd</sup> Street prompted a review of the site, bringing to light the situation with the fence.

Part of the reason why the applicant may have been confused regarding the fencing requirement is nearly all the site lies within the 100-year floodplain, and is located 450 feet north of the Arkansas River. There were various discussions among staff, and between staff and the applicant about the potential negative consequences of having the types of fences required by the code in a 100-year floodplain, and in such close proximity to the river. The chain link or solid fencing required by the code is likely to be an impediment to good drainage by acting as a dam or catching debris that will ultimately act as dam. A five-strand barbed wire fence would allow water and debris to flow through much more effectively than chain link or solid fencing.

Within a ½ mile of the site there are approximately 10-12 residences and the Heart of Kansas Southern Baptist Association, which has a camp located immediately to the west. The Southern Baptist camp has a sizeable lake on their site. Another property owner west of the site also has a small pond located immediately northwest of the Baptist's lake. There is also a sizeable pond located about a ¼ to the east of the application area. None of these ponds or lakes are enclosed with solid fencing. Further east of the Baptist campground is the First Presbyterian Church campground. Except for the two campgrounds, the majority of the remaining land in the area is used for agricultural purposes.

**CASE HISTORY:** Described above in background section.

**ADJACENT ZONING AND LAND USE:**

NORTH: RR, Rural Residential; agriculture, scattered large tract single-family, contractor's yard  
SOUTH: RR, Rural Residential; agriculture, Arkansas River, sand pits  
EAST: RR, Rural Residential; agriculture, scattered large tract single-family, drainage  
WEST: RR, Rural Residential; scattered large tract single-family, church campgrounds

**PUBLIC SERVICES:** The site has access to 73<sup>rd</sup> Street North, a sand non-section line, Park Township road that connects to Ridge Road, a paved two-lane county road. As required by the initial Conditional Use, the applicant has obtained an agreement with Park Township to assist with the repair and maintenance of 73<sup>rd</sup> Street North.

**CONFORMANCE TO PLANS/POLICIES:** The Comprehensive Plan recognizes that resource based uses, like sand extraction; have to occur where the resource is located. The supplemental use fencing requirement is the recognition that pits with water can be an attractive nuisance, posing a hazard to the public or animals. The code recognizes that each site is different, and it may be necessary to modify these requirements in that the code permits the governing body to modify these requirements.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area surrounding the application area is predominantly agricultural with associated large-lot residential or farmsteads scattered about. Access to the site is a township maintained two-lane sand road. The Arkansas River is located south of the site, and further south is another sand pit. All of the zoning in the area is RR Rural Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned RR Rural Residential with a Conditional Use to permit mining of sand and gravel. Mining operations have to go where the resource is located, and are best located in rural areas. Therefore the approved Conditional Use for sand and gravel extraction is appropriate. The fencing standard at issue is typically a positive common sense requirement primarily designed to protect children or animals from mishap with an enterprise that creates excavations that likely will collect water and will have piles of sand that can be an attractive nuisance. However, at this location, which is virtually all located within the 100 year and located so close to the Arkansas River, the standard fencing requirement may be inappropriate.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Substitution of the proposed five-strand barbed wire fence for more solid fencing should not substantially affect nearby property as there are already three water features plus the river that are not enclosed by solid fencing.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The plan does not speak to this issue; it has been standard practice to require the fencing prescribed by the code. However, staff is aware of at least one instance where an existing five-strand barbed wire fence was substituted for the code-required fence on a barrow pit located southwest of the City of Wichita. From a practical standpoint, the requested fence may be more appropriate with policies designed to minimize obstructions in floodplains.
5. Impact of the proposed development on community facilities: Modifying the fencing requirement should not impact community facilities in any significant way.

MILLER Included in your packet were two proposals that the applicant has submitted in terms of how he would like to fence the property. Their preferred proposal is this particular layout where they would come in and put a barb-wired fence that would encompass this yellow area because this area, the other three sides, are already fenced with a barbed wired fence, so essentially they need close in the northern line some how.

Option #2 submitted by the applicant would be to go out to the road and fence it in out at the road. The larger tract is also contained by an existing fence, except on this north line. That is their request; to substitute the code required fencing with a barbed wired fence.

JOHNSON Dale, you have me confused, we couldn't have made this decision but we can now?

MILLER This will have to go on to the County Commission, but since it is an amendment to the Conditional Use, we have to start with the Planning Commission and then go to the Governing Body.

JOHNSON So no matter what we do it will still go forward to BOCC?

MILLER The Planning Commission will be making a recommendation to the BOCC that I am sure they would appreciate to have.

DOWNING Dale, we are talking about a barbed wire fence along one side of the work area, but it also indicates that the remaining portion is simply fenced with barbed wire fence, which doesn't met the Code requirements either. Are we talking about fencing the whole area or only a portion of it?

MILLER The waiver would cover all four sides. What they are pointing out is that there is an existing barbed wire fence on three sides and they would need to close in the fourth side, and they are offering an option, either the one at the road or the one further closer to the work area.

DOWNING So we would have to give the waiver for all four sides?

MILLER Yes, this waiver is for all four sides.

BARFIELD If the barbed wire fence does not meet the code, why is staff recommending approval?

MILLER In the discussions that we had, because of the proximity to the lake, this entire site except for a very small corner is all in the 100-year floodplain. Staff had concerns that if there is a flood in this area the fences that are prescribed by the code would act as a dam and catch debris and be worse in a flooding situation then a barbed wire fence would be. Primarily that is the main reason we are supportive of that.

It is also a rural area. In the staff report it also notes that there is another pond or lake, here and here, and over here. So as best staff could tell those are not enclosed by any of these code required fences. They are not required to be, it is just that they already exist. Staff felt that the reason the requirement was in the code is that these sandpits with water in them could ultimately act as an attractive nuisance, and that is the reason the code has the fencing requirement. Staff felt that the type of attractive nuisance is already in the area; that adding this sandpit wasn't going to be any more detrimental than possibly what was already out there.

WARNER Is the existing fence a five-strand barbed wire fence, and is the existing fence a condition that they don't have to upgrade it?

MILLER I will let the applicant refer to that, I only saw pieces; of it that I could see, it appeared to be in good conditions.

GAROFALO I need a clarifications, the current condition, show me where and what all they would have to fix.

MILLER Currently this black line depicts an area that already has a barbed wire fence. So Option one is to stay out here at the road and basically fence it off on the south side of the road and encloses the whole thing; this much larger area. Option two is to drop down and just enclose the area that is actually going to include the work area, equipment, and storage area of the sandpit operation itself.

GAROFALO So if no change is made they would be required to put the fence up there on the road at the north, as the rest of it is already fenced?

MILLER Correct, because it says the application area, and since they included the larger tract.

GAROFALO Staff is concerned that putting a fence up there is because it is in the floodplain; the fence might cause a problem if there were a flood?

MILLER If they follow the code they would then have to come in and re-fence all of the area with this solid fencing, because the whole site is in the 100-year floodplain. If there was a flood that covered the whole site then all that solid fencing could act as a dam and end up causing more damage than what you would want otherwise.

GAROFALO Do we have an option of approving a barbed wire fence up there on the north end?

MILLER What they have proposed is either the one along here, or one here (pointing to the map).

ROBERT KAPLAN, ATTORNEY KAPLAN, MCMILLAN AND HARRIS, 430 N. Market I am representing Mr. Gronniger. I think most of the problems between people arise from either lack of or miscommunication, and I think everyone involved in this case is going to agree that was the case here. I did not represent my client at the time the original case was approved.

When my client left the MAPC meeting on September 9, 2003, he understood that barbed wire could be substituted for the chain link. The staff report at that time and the minutes at that time would lead one to believe that was going to be the case. Staff simply suggested that the County could vary the Code requirement by substituting barbed wire, and then there was a discussion about the floodplain that you heard and about the issues of a solid fence creating a debris barrier that would cause impairment to the floodplain.

Now, my client submitted an operational plan. The operational plan does not show any fencing, or the chain link, and that plan was approved at planning level without the fence. Perhaps that is a mistake. I am not suggesting that they are held to it. If they made an error in approving it without the fencing and did not intend to, so be it. I am not giving you any kind of legal argument that they are stuck with that. They are not. But nevertheless when my client got his operational plan approved, he didn't have any need for the fence.

So when my client came in to see me he said he was suppose to use barbed wire, and now I have a letter that the condition has not been waived. My advice to my client at that time, I said rather than argue about it and make a legal issue about it, let's just go in and ask for an adjustment.

The merit, I think in this argument, is in the adjustment. In the first place, a four-foot fence, we are talking about security, is useless as a security measure. What good is a four-foot chain link fence to keep people out, you can virtually step over it. What makes the four-foot chain link a security measure is that it has to have three strands of barbed wire on top of the chain link fencing. You are going to end up with a barbed wire anyway as a security fence. So it seems to me that it makes sense to just substitute the barbed wire, and have the five strand barbed wire in the first place, which will accomplish as much as a little bitty four-foot fence that is going to have to rely on the barbed wire to keep kids from climbing over it anyway, and then we don't impair the floodplain. We provide security. This is not a densely populated area. This is a rural area and there is very little around here.

The lake on the west belongs to a church camp, is for children and they are not required to fence that lake. We will not be the only watercourse in the area that is not fenced but I think we are going to have every bit as much security. We have a lot of unnecessary expense in putting up a four-foot fence because then we will have to put up the barbed wire on top of it.

WARNER My question is for staff. Is the existing five-strand fence, what is the condition of the fence, and how high is it?

KAPLAN It is a four-strand barbed wire fence, and we will increase it to five-strands, and it will then comply with the five-strand that was required.

WARNER Why do you prefer to have the fence south rather than north on the property?

KAPLAN This is a bad drawing that I submitted. We prefer just to fence the operational area. We are 500 yards off of the road to the south. The rest of this is agricultural ground. We have gating and security. If you want it up here on the road we can do it, but it is basically the same expense. I just think it would make more sense to bring it down and protect the operational area. This is also heavily vegetated area and you have the river, and the site is pretty much protected by the vegetation and the existing fence chain link all the way around it and we have not have any intrusions or problems. I think this is a major expense that we didn't count on and my client thought that the chain link requirement had been waived, and he apparently was mistaken and that is why the amendment has been filed. My client submitted an operational plan without a fence that has an approval stamp on it from planning.

BARFIELD You just said that you had chain link all the around it where is that?

KAPLAN That is what we don't want to do. Did I say chain link? I am sorry there is not chain link there.

TAPE CHANGE TAPE 1 SIDE B BEGINS

KAPLAN If we felt that there was a real serious security problem and if we felt a four-foot fence was going to solve it, it is not. We will still have to do the barbed wire anyway.

BARFIELD Is cost what is driving your request?

KAPLAN My client did have the numbers at one time but it is will be multiple times of the cost to do the barbed wire. I am not sure what the cost comparison is.

BISHOP I have a couple of operational types of questions, does this Conditional Use permit from sunrise to sunset to be operated?

KAPLAN I don't think there was a term of years on the Conditional Use. I wasn't here.

AUDIENCE It was approved for eight years for the operation.

BISHOP My next question has to do with the operational area, and here I am questioning the area to be fenced. If that southern end is the operational area, was the Conditional Use requested for the entire area? What I am getting at is where the operational area is now and then after a few years will it move further north?

KAPLAN Had I been Mr. Groninger originally, I would have asked for a Conditional Use from the guard shack where we have materials and we have the extraction of materials, if it does enlarge, it would be towards the river anyways. I would have applied for just the area that I needed. Mr. Groninger put his total ownership in it. I wouldn't care if it was amended to include just the operational area.

BISHOP So one reason for that whole area being part of the Conditional Use is because that was the ground that he owned?



KAPLAN He didn't know any better.

BISHOP If the MAPC recommends approval of the fencing of the operational area, that yellow dotted area and what happens if the operation moved north? It could move north up closer to the road and then would that evoke the fencing to that area?

KAPLAN Why not a condition that the area of operation, including the area of storage of materials, and the actual extraction, the whole operational area where there is any sand reserve activity be enclosed by a five-strand barbed wire fence regardless of where it goes.

MILLER If they moved the operation north, they would have to fence it in order to keep it enclosed because the Code requires the area to be fenced.

BISHOP But the waiver would not move north, so we would be back here again.

MILLER If there was an understanding that when you approve this that it applies to the entire site then as they used moved, you could use the same type of fencing to the north.

BISHOP Do the conditions that Mr. Kaplan was mentioning of specifying an operational area sound reasonable to you or do you think it is unworkable?

MILLER I don't see it as an issue.

MCKAY Mr. Kaplan, the analogy that I am going to use is probably as crazy as the one that you used on the barbed wire to the chain link fence. My two-year old grandson can crawl under a barbed wire fence but he sure can't crawl under a chain link fence. So I don't think they are even close to the same type of fence or the same type of protection, even though you have to put the barbed wire on the top.

KAPLAN If you are talking about two and three year old children who are wondering around out in agriculture field without supervision, that maybe true. But kids that get into these lakes and the kids that violate this stuff are not infants supervised by parents; they are teenagers and youngsters that are out on their own. I think the security is to keep the 8-15 year olds out.

MCKAY Your analogy that the barbed wire and chain link are the same type of fencing is ridiculous.

KAPLAN Nevertheless people that want to get in there for vandalism or get in the water, if they are 10-12 years old and they are 5 feet tall, they can get right over that fence.

FRANK LACY, 9555 W 73<sup>RD</sup> Street North, Valley Center KS 67147 Which is just west of where they are putting the sand pit in. There wasn't anyone here against this lake to begin with because this was going to be a mom and pop operation with one truck. This is a Township road that runs down to it, and seven to eight trucks run it at the same time. There have been two wrecks at 73rd Street and Ridge Road. The dust is so bad on that dirt road that if you follow a truck you can't see the trucks coming from the other direction. When it rains it gets very slick, and the trucks can't even get up it, and so therefore they go around the other way. Their trucks are being overloaded. I have trained drivers; I work for Wichita Technical College. They built the road up to the sandpit, but 73rd Street is dangerous. You couldn't even get up that road about a month ago because of the rain. Their trucks are overweight.

There are two family campgrounds out there, one is the Kansas Southern Baptist and it has a lake and two children have drowned there a long time ago. Where they come out of the road there was corn growing and it came out to the edge of the road and they didn't do anything to cut it out. This is a dangerous situation if you have 7 trucks up and down that road when it is dusty and you have 40-100 people going up to the campgrounds it is dangerous. I don't mind a mom and pop operations but it looks like to me that if they could make a road up the field like the way did they could do something about the trucks that don't stop.

DUNALP Your time is up.

LACY My pickup has three rocks in the windshield and the truck almost ran over me and I went ahead and passed him because I couldn't see and when I got up to 73rd Street he jumped out of his truck and he jumped out and started running out to my car and said he would whip me but I am an old man.

BISHOP Could you show us on the map where you live?

NITA LACY, 9555 W. 73rd Street N., Valley Center, KS 67147 I have lived here since 1972. I have a good history about this area. I have had to move my horses out of there and put them up on the hill when the flood came through there. They are making a lot of money. They are very nice people, and they want a lake to play in but we don't want a lake for children to drown in.

I have a letter from Mrs. Marie Watson, 8931 W. 73rd Street North, and she can't be here today because her husband and herself have medical conditions that prevent them from getting out. This is her letter (she reads the letter). I am worried about the life saving help from emergency vehicles not being able to get in here with the road in the condition that it is in. Those were her concerns.

Now, I would like to see a chain link fence between them and the Baptist, and all the way across there to keep the kids off the trails and from getting into that lake. I would like to see a hard surfaced paved road. It is a paving company, and they are making money off of it.

PHYLLIS HAIGH, 7451 N. 73rd Street West, Valley Center, KS 67147 I also own property at 7520 W. 73rd. Regarding today's staff report, which was presented by Mr. Dale Miller, on page 2, paragraph 3, it says the applicant wants to use existing multi-strand

barbed wire fencing on three sides. I am guessing this is your standard three-strand barbed wire fence that was put in 20 years ago with natural wear and tear. I believe the requirement is for a 60" fence; it is a 48" chain link with three strands above, which would be a total of 60".

On page 2, the last paragraph, the Governing Body did not hear the CON2003 Conditional Use request, as there wasn't any protest or appeals filed. We had a petition at the time that was signed but were told by the Planning Department office that it would not be valid because it had signatures other than the residence or people who lived within a 1,000 feet. I find it interesting, as a side note, that when Cornejo applied for a Conditional Use permit at 77th and Ridge Road, and a petition was presented, Mr. Richard Gronniger was one of the signers of that petition.

Page 3, first paragraph, the chain link or solid fencing required by the Code is likely to be an impediment to good drainage by acting as a dam or catching debris that will ultimately act as a dam. On September 18, 2003 Dennis York testified at the MAPC hearing and his quote is "The roadway up here is level with the fields, and there are no cut ditches for drainage so we have no real surface water runoff problems".

On page 3, the paragraph entitled Public Services, it says as required by the initial Conditional Use the applicant has obtained an agreement with Park Township to assist with the repair and maintenance of 73rd Street North. I personally asked Bud Burke, the Park Township Clerk, about an agreement, and he said that there was no agreement signed.

On page 4, paragraph one access to the site is a Township maintained two-lane sand road. In the first place, the road is not maintained, and it is not two lanes, it may be two lanes for a car but trucks have to wait on each other to get past the many soft spots that they have created and dug out on the sides of the road. Not to mention the 18-inch berm of material at the side of the road that the owner operators of the sandpit put on the road.

On page 4, paragraph four it notes three water features plus the river that are not enclosed by solid fencing. They use that as an example. My answer is they are not operating sandpits. Also the same paragraph makes a reference to a barrow pit that had a five-strand barbed wire fence. The difference between a barrow pit and a sandpit is about 20 + feet deep and different equipment takes the sand out.

In my opinion, all of this discussion is mute since this fencing was to be installed, to quote the Wichita Sedgwick County Unified Zoning Code, prior to the beginning of any extraction operation. The original Conditional Use Resolution CON2003-32 should have been null and void nearly a year ago. Even if Mr. Gronniger misunderstood and thought he should use barbed wire instead of chain link fence, it could have been done over a year ago. If you choose to overlook all of the infraction committed so far and approve to amend CON2003-32, I would recommend that you force the owner/operators of the sandpit to pave 73rd Street North from Ridge to Tyler Road. The road looks pretty good today because there has been some work done on the road in the last week in anticipation of today's hearing, and Park Township actually put out nearly 20 tons of road gravel on the road yesterday. The road is presently still too narrow for two-lane truck traffic. It is common knowledge that when the road east of the sandpit gets in real bad conditions then the trucks go west and north a mile in order to avoid the bad road.

KEVIN QUENZER, 7410 W. 73rd N., Valley Center, KS 67147 It has been 17 months since this was approved; since these zoning codes haven't been met with the fencing from the very beginning of this, I would like some of the other issues involving this road and this area looked at from everybody. In the mining of sand, the zoning code, number 4 is about the fence and what qualifications that need to be done with the fence. Also #22 of that code states that the road must be sand or gravel, and they must run a water truck or some kind of dust retardant on the road to minimize the dust for safety reasons. I just wish that the MAPC would follow every rule of law to the zoning code in this area, and what has been going on and everything was followed up to code they probably shouldn't be a problem. There has not been one water truck run on this road. There has not been any dust retardant put on this road.

DENNIS YORK, 8443 W. 73rd N., Valley Center, KS 67147 I am the operator that leased the ground from Mr. Gronniger that first set in motion the sandpit. The original operation was set as a mom and pop operation, and about six months into it we were approached by a larger company to accelerate the operation and to make this sandpit quicker so that it wouldn't be lasting the eight years that was turned in with the MAPC giving us the Conditional Use for the eight years. Mentioned at this meeting earlier was the operational plan that was submitted to the Planning Department. Commissioner Mitchell was on the Planning Commission at that time and asked several questions about the parts that were in the floodplain. We made a recommendation at that time that there would be no fencing other than what was existing on the property with the exception we wanted to fence in the roadway that came in from the north. There have been several comments on your map as to why that whole area was listed in the CU. The whole area was what was outlined that listed from 73rd Street where the roadway came in to where the operation is down to the bottom corner. So that is the reason for the acreage that was listed and the Conditional Use that talked about why it wasn't the 71 acres.

There have been several issues that have been brought up here today about the road. The road is a problem. The road belongs to Park Township. We have a working maintenance agreement with Park Township to submit materials for the road and Park Township maintains the road. Mr. Quenzer asked why they don't run a water truck down through it, Park Township does not want to assume the liability of running a water truck to take care of the dust and have cars or trucks sliding into ditches. Since that time of the original conditions was set forth, we have been able to get Park Township to cut some ditches so that the water can run off the road. We have provided material in rock, road grader work, in sand and in mud balls. We have been building material up to bringing this road up to a better section of county road. This is a non-sectional road. It comes in off of Ridge Road and ends at Tyler Road. Now everyone was talking about emergency vehicles. If an emergency vehicle had to come in they could come in 77th Street, which is a sectional road and come down into the area. There has been some talk about emergency vehicles coming in. I remember my dad and I had to break snow out along that road so they could get into the camp because they were out of propane and the guy was having a heart attack. When we had the ice storm in January, my loader was the one that went down 73rd Street to push the trees off of the side of the road so that these fine people can get in and out.

There are several issues here before you, the one we brought to you this time, is about the fencing. The fencing is what is reasonably necessary to keep reasonable control of this property. I believe that the five-strand fence is adequate for the surrounding area.

KAPLAN The road is not the issue here today, but I will tell you that we are in compliance. There is no violation of the condition on the road which says nothing more than we maintain an agreement with Park Township, enter into an agreement, and we have an agreement, and I have copies of it and I have correspondence that lead up to it and I have the conditions of the CU. We supply the material and Park Township does the maintenance. We have supplied the material and I have about \$6,000 worth of invoices for crushed rock alone and that doesn't include the mud balls, the clay material or the sand. We are only talking about from Ridge Road to the site. The people that live west of the site; it dead-ends and doesn't go any place. So the condition of the road west of the site is meaningless. The only infraction is possibly the fence issue, and that is a bona fide legitimate confusion. I have an approved CU that doesn't require that fence. Was it a mistake? Probably. Would I assert that the City is bound by it or that the County was bound by it? No I will not, but I can understand that Mr. Gronniger relied on it, and to suggest that he is out there violating this Conditional Use is totally not accurate.

We believe that as far as the road that we are in compliance, and with five-strand barbed wire that doing a 4-foot chain link is not accomplishing the purpose and is an unnecessary expense.

MITCHELL Mr. Kaplan, do you have a copy of Jim Weber's letter of December 2, 2003, to Richard McClure of Park Township?

KAPLAN Yes, I have a whole package and file for this case.

MITCHELL I have a copy of the letter and I want to ask you a question of that letter. Do you think you are in compliance with Item 3, Item 4 and Item 6 of that letter?

KAPLAN Yes, I do and I have marked them all ok, and I don't know what I would not be in compliance with. I marked them off, and when I got the letter I went back and review this. The existing roadway is wide enough to handle the truck traffic.

MITCHELL You think it is now?

KAPLAN We have been told that it is. The roadbed is able to support truck traffic. I have been told that it is. Drainage issues, I am told that is ok. The letter itself speaks to and approves all of those things.

MITCHELL What I am telling you is that I don't believe, that as of today, and for some period in the past, Item 3, Item 4 and Item 6, are in compliance. The road as it is now is not in compliance.

KAPLAN I will respectfully disagree with you Commissioner Mitchell, and suggest that is a Code Enforcement issue and if Mr. Glen Wiltse has come to the conclusion that we are in violation of any condition of the Conditional Use then I need to hear from Mr. Wiltse as to what we need to do to correct that infraction, if there is one. That is a Code Enforcement issue, and I don't think that is a land use Planning Commission issue.

MITCHELL It was the Planning Commission that made the conditions, which these items are supposed to answer. I want to list for the record what Mr. Weber's letter contains on the following items:

Item 3, says that "Is the existing roadway wide enough to handle the truck traffic". Item 4, says "Is the roadbed able to support the truck traffic". Item 6, says and refers to "A written agreement with Park Township that they will maintain and repair that road". Mr. Weber states that he does not believe that significant deterioration of the road will occur when the sand extraction is running. It is my opinion that it is not in as good shape today as it was the day that this Conditional Use was heard.

BISHOP The condition of the road is not relevant.

DUNLAP We are talking about fencing today.

KAPLAN That is my opinion.

DOWNING Although there maybe some other problems with this sandpit operation, the issue today is how much security do we want with fencing around the project. As an old Ohio farm boy I will guarantee you that a five-strand barbed wire fence does not provide the same security as a 48" chain link fence with three-strands of barbed wire on fence. It is taller. It has better density, etc. It is the degree of safety that we need to consider, not total safety because there is no way of keeping everybody out of there if somebody wanted to get in. If we as a group think that a five-strand barbed wire fence would provide that relative amount of safety then I recommend that we recommend to the governing body that we approve that. I personally, because of the location, think that is probably satisfactory. I disagree with Mr. Kaplan that a five-strand barbed wire fence will equate to the 48-inch chain link.

BISHOP I would tend to agree with the barbed wired fencing as being sufficient and have some concerns about it causing flooding in that area. One of the reasons I asked the property owners that were here to speak to us about where they lived is because it is a balancing act. There may only be six more years to go, but we know how sometimes these have longer years than that. One of the issues that I am concerned about is that if we recommend the waiver, and the County Commission approves it, is the County liable if there is flooding, or a drowning?

ROBERT PARNACOTT, ASSISTANT COUNTY COUNSELOR What is the specific liability concern?

BISHOP If we approve the waiver and don't require the fencing for this specific lot is there any kind of liability issue for the county?

PARNACOTT No.

SHERMAN I have a question about the acceleration of the project.

DUNLAP I suppose Mr. Kaplan, why is it not going to be an eight year operation now?

SHERMAN Yes, Mr. York spoke that the original operation was set as a mom and pop operation and about six months into it they were approached by a larger company to accelerate the operation, and to make this sandpit quicker so that it wouldn't be lasting the eight years. What is the projected acceleration of this project since there is more activity?

KAPLAN I don't know if it will be shorter than the eight-year term. It is going to be whatever time it takes to exhaust the sand reserve, not exceeding eight years. It could be shorter if that sand comes out of there, and production is increased. It would be no different than any natural resource, then it could terminate sooner. We know it can't go longer. I don't know the reserve quantity.

SHERMAN But had he stayed with the one truck operation and went the entire eight years and didn't completely exhaust the project, that would have been what it was?

MCKAY My concern, only concern is are we setting precedence now?

MILLER This has been done once before that staff knows about.

MCKAY Where?

MILLER Southwest of town for Bergkamp.

TAPE CHANGE TAPE 2 SIDE A BEGINS

**MOTION:** To approve subject to the staff recommendation.

**HENTZEN** moved, **BISHOP** seconded the motion.

JOHNSON Dale, when was the fencing requirement taken in place for these sandpits? Being on the west side, I know there were a lot of them that were dug that did not have this requirement.

MILLER I don't know exactly. They have been in the Unified Zoning Code as far back as we could find Conditional Use applications. They were probably officially listed as a supplemental use regulation back in 1996 but if you go back and look at some of the older applications they go even beyond that. So they have probably been there for a long time.

GOLTRY They were actually added in 2001.

MILLER In 1996 we used the conditions that had been in previous cases and used that as the model.

JOHNSON There have been a lots of sandpits approved without fencing in the past, I am not saying if that is right or wrong. The other thing is six more years. If this thing is pumped out the Conditional Use will go off. What will be the fencing requirements then?

MILLER Once the Conditional Use lapses there would be no fencing requirement.

JOHNSON They can tear the fence down and we will still have a water hole so I guess on that account the road deal is more of a concern to me probably but we are not dealing with that today so I will support the motion.

MARNELL I have a question for the motion maker and the second. Is that approval with the applicant's Proposal #2 where they prefer to put the fence?

HENTZEN I am trying to sort out what the staff recommendation was. It just says the request be approved. I believe they recommend the five-strand fence.

MILLER Staff did not choose between the two proposals submitted by the applicant. They prefer the one that fences in the smaller area.

**AMENDED MOTION:** That it be the shorter fence enclosing the smaller piece, in other words, not up to 73<sup>rd</sup> and it be a five-strand barbed wire fence.

**HENTZEN** moved, **BISHOP** seconded.

BISHOP As the second I would agree with that but want to get on the record that we are talking about the operational area and that if the operational area changes the same requirement will move with it.

BARFIELD I would like Mr. Weber from County Public Works to take the podium. There has been some questions about the compliance, non-compliance about this application that was initially granted. From your standpoint are the in compliance with the Conditional Use Permit that was granted in 2003?

JIM WEBER, The piece that we are involved in, which is Condition #6, which is the road, they do have an agreement with Park Township. Whether people like the way that it is working or not, they do have an agreement to maintain the road so we would say that they are in compliance with Condition #6 of the whole case. Now, I don't do the rest of the Conditions. But if Condition #6 is your concern we think they are in compliance.

BARFIELD There are a couple of other conditions, number 3, and Condition number 4. The reason I bring this up is that if they are not in compliance then the Conditional Use is null and void.

DUNLAP That is not our discussion. That is a Code Enforcement item, and that is not for the MAPC to decide.

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**Amended Motion carried (11-2). (BARFIELD, MITCHELL opposed).**

5. **Case No.: CON2005-12** – Shanan and Elizabeth Burke (owner/applicant) Request Conditional Use to permit vehicle sales on property zoned "LC" Limited Commercial on property described as;

Lots 98, 100, & 102, Lawrence Avenue, now Broadway, English's 9th Addition, Wichita, Sedgwick County, Kansas.  
Generally located South of Clark and west of Broadway.

**BACKGROUND:** The applicant requests a Conditional Use to permit vehicle sales on a .24-acre "LC" zoned property, located south of Clark and West of Broadway. The applicant currently owns and operates a vehicle sales lot immediately north of the application area. This request would expand an existing vehicle sales use. The subject property is zoned "LC" Limited Commercial, requiring a Conditional Use for vehicle sales. The applicant submitted the attached site plan illustrating the proposed use of the subject property as a vehicle sales lot.

"LC" Limited Commercial zoning along both sides of Broadway Avenue characterizes the immediate area. North of the application area are two existing vehicle sales lots and south of the site is a restaurant. East of the site, across Broadway are a mixture of multi-family residences, single-family residences, retail stores, and hotels. West of the application area, across the alley, is a TF-3 Two-family residential zoned street with a mixture of single-family and duplex homes.

**CASE HISTORY:** The subject property is platted as English's 9th Addition.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"LC"	Auto sales
SOUTH:	"LC"	Restaurant
EAST:	"LC"	Multi and single-family residences, retail, hotels
WEST:	"TF-3"	Single-family and duplex residences

**PUBLIC SERVICES:** The subject property has one point of access to Broadway, which is a four-lane arterial with a 70-foot right-of-way at this location, and a daily traffic count of 12,875. The 2030 *Transportation Plan* recommends that this portion of Broadway remain a four-lane arterial; likewise, the CIP does not propose any projects at this location. Municipal water and sewer is available to serve the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The Commercial Locational Guidelines of the Comprehensive Plan also recommend that auto sales lots and other types of infrequent purchases or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial areas.

The Unified Zoning Code gives specific requirements for outdoor vehicle sales in "LC"; Section III-D.6.x. of the UZC is attached.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The subject property shall comply with the requirements of Section III-D.6.x. of the Unified Zoning Code.
2. The subject property shall be developed in general conformance with the approved site plan.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Commercial zoning and uses along the Broadway corridor, including existing vehicle sales, characterize the surrounding area. While outdoor vehicle sales is not in character with the "TF-3" zoned single-family residences west of the application area (across the alley); the provisions of the Unified Zoning Code Section III-D.6.x. requires screening, and mitigates potential negative impacts on nearby residences.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial and is currently used for restaurant parking. The property could continue to be used without the Conditional Use for vehicle sales.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Expansion of vehicle sales could have negative effects on residential properties west of the site. However, the screening, lighting, and compatibility standards of the Unified Zoning Code should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms to the Land Use Guide and Locational Guidelines. The Commercial Locational Guidelines of the Comprehensive Plan also recommend that auto sales lots and other types of infrequent purchases or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial areas.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

**MOTION:** To approve subject staff recommendations.

**MARNELL** moved, **MCKAY** seconded the motion, and it carried 13-0.

6. **Case No.: ZON2005-12** – James and Geraldine Loehr Living Trust; Baughman Company, P.A., (Terry Smythe) Request Zone change from "SF-5" Single-family Residential to TF-3" Two-family Residential on property described as;

Lot 4, Block E, Westport Addition, Wichita, Sedgwick County, Kansas. Generally located on the northeast corner of Westfield Avenue and Dubon Avenue.

**BACKGROUND:** The applicant is seeking TF-3 Two-family Residential zoning for a .48- acre platted vacant lot located at the northeast corner of Dubon and Westfield. The lot is currently zoned SF-5 Single-family residential, and is triangular in shape. The applicant proposed to develop the site for duplex uses. The *Unified Zoning Code* (UZC) defines a duplex as a lot used for "...two principal dwelling units within a single building." The code permits building heights up to 35 feet in TF-3, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing single platted lot would allow only one duplex structure with two living units or one single-family structure (permitted by right as TF-3 residential uses); however it is possible to replat or lot split the existing .48-acre lot into smaller lots that could allow more than one structure. Even as currently zoned the lot could be lot split into more than one single-family lot.

The lots to the east, north and west are all zoned SF-5 Single-family and developed with single-family residences on approximately half-acre lots. These homes appear to be well maintained. The lots located south of Dubon are zoned LC Limited Commercial and GC General Commercial, and are vacant.

**CASE HISTORY:** The Westport Addition was recorded in 1953.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5 Single-family Residential; single-family residences  
SOUTH: GC General Commercial, LC Limited Commercial; vacant  
EAST: SF-5 Single-family Residential; single-family residences  
WEST: SF-5 Single-family Residential; single-family residences

**PUBLIC SERVICES:** Sewer and water services are available. Westfield is a paved street while Dubon is sand and gravel; both streets have 60 feet.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Map" depicts this site as appropriate for low-density residential uses at a density of one to six dwelling units per acre. This .48-acre site contains approximately 20,908 square feet. The UZC has a minimum lot size of 3,500 square feet for single-family uses and a 3,000 square-foot minimum lot size each duplex or multi-family unit. The application area could theoretically allow up to three duplex structures or five single-family units, but when setbacks, parking and the shape of the lot are factored in the actual density the site could accommodate is much less. If the site were developed with one duplex structure, the density would be 4.16 units per acre; with two duplex units the density would be 8.69 units per acre, which exceeds the plan recommended six or less dwelling units per acre.

The "Wichita Residential Area Enhancement Strategy Map" depicts this site as a "conservation" area. Conservation areas are neighborhoods that are basically sound from a housing condition, social and market standpoint, but need to be protected from influences that could trigger a decline.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area north of Dubon is zoned SF-5 Single-family Residential and developed with single-family residences. The properties located south of Dubon are zoned "LC Limited Commercial and GC General Commercial and are vacant. These commercial tracts front Highway 54. Single-family residences are

located on three sides of the application; they are well maintained and the neighborhood appears to be stable. Dubon provides a logical boundary for the neighborhood with respect to more intense zoning.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 Single-family Residential which permits single-family residences as well as a few other non residential uses such as a church. The site is large enough that it could be potentially developed with more than one single-family structure. The SF-5 zoning is appropriate.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The TF-3 Two-family Residential zoning will introduce increased density and more intense uses into the neighborhood than are currently permitted. This neighborhood currently has homes situated on half-acre lots. The TF-3 district would permit single-family homes on lots as small as 3,500 square feet. Currently there are not any duplex units in the area. TF-3 zoning also permits "convalescent care facilities, limited" which is not permitted in SF-5 zoning.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval could possibly allow the applicant greater economic gain; although it is probable that development of the site with single-family uses would also yield a reasonable return. Denial would preserve the community's goals to support stable neighborhoods by preventing a spot of zoning to intrude into a single-family zoned area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Residential Area Enhancement Strategy Map" depicts this site as a "conservation" area. Conservation areas are neighborhoods that are basically sound from a housing condition, social and market standpoint, but need to be protected from influences that could trigger a decline. The "Wichita Land Use Map" depicts this site as appropriate for low-density residential uses at a density of one to six dwelling units per acre. If only one duplex structure is developed on the site, it would conform to the plan's density recommendation.
6. Impact of the proposed development on community facilities: Approval would result in a nominal increase in average daily traffic on unpaved streets.

MCKAY Dale, on the commercial properties along Kellogg, how much of that was cut back when they re-did Kellogg? Is that the way that it is today or has that been cut back?

MILLER I am assuming that this right-of-line here is the current right-of-way line. Is that the question that you are asking?

MCKAY Yes, because they took quite a bit of that land along there.

MILLER They are supposed to be keeping these maps up to date.

DUNLAP Dale, the large property on the northeast and southwest are both single-family dwellings?

MILLER Yes.

BISHOP I have a point of clarification, the mix of General Commercial and Limited Commercial seems strange can you explain that?

MILLER That is the way people have asked for it or it was assigned back whenever they put it in originally.

HENTZEN Have you had any discussions with the engineers? That is where they have eliminated all of the stuff south of Dubon on your map, all the way that, I believe the City owns it. It appears to me, because I don't live but a short distance from there, that when the City sells that commercial land they will require one of these nice fences be built from Tyler Road all the way down to Seville.

MILLER As I understand, this property is not owned by the City of Wichita, a private landowner owns these tracts.

AUDIENCE John Dugan.

HENTZEN All those businesses where torn down.

MILLER I think if you look Mr. Dugan's name is on many of those lots. As far as I know, there is no current plan to put fencing or a wall along this side. In fact, as these properties development, I have already talked to Office of Central Inspection, they would say that these properties have two front yards and there would be no fencing requirement because of the fact they are double loaded with the dual street frontage. Now the applicant could chose to put fencing in whenever they develop it if it worked out that the rear of their property was going to be on Dubon and they didn't want access there, but the code would not require it.

HENTZEN The next street to the west is Seville and the City has already put up a stone fence from Seville all the way down to the Cowskin.

MILLER I am not saying they are not, I am just saying that nobody has told me they are.

GAROFALO Dale, a while back we had another case that involved Dubon, can you remember that?

MILLER It was over here on Tyler. There is a CUP that was approved in this general area for Holland Paving. They have never completed their plat and that is why the CUP is not showing up yet.

MITCHELL Dale, did I understand that if the lots are zoned other than residential on the south side of Dubon and wanted to they could file an application or a petition to pave Dubon since they are in a benefit district for Dubon?

MILLER Anybody can file a petition and try to create a benefit district.

MITCHELL If they have frontage.

TERRY SMYTHE, BAUGHMAN COMPANY In summary, we are requesting the duplex category for this lot. If you look at all the lots on the north side of Dubon, you see the ones that are odd shaped lots, just based on the configuration of those properties. It is not the typical rectangle lot. We are looking at this piece of property thinking if it was a rectangle lot located to our north we could subdivide that into 5,000 square foot lots and put four houses on a 1/2 acre. We are trying to look at this lot and look at the site utilization realizing it is an odd shaped lot, and we think being able to take units and being able to put them together will give us more site utilization and design utilization to make that property look better.

It is not our intent to put multiple, three or four, duplex units on the lot because it will not work. Based on my rough drawings that I have done we will at best be able to do 2 duplexes on this lot. I look at what is happening south of Dubon; frankly it is scary. You have unrestricted General Commercial zoning and Limited Commercial zoning just south of this property. If you want to provide a buffer to single-family homes you need to have something in between it. I don't get scared by duplex zoning. There are good duplexes and there are bad ones. A mixture of units, land use types are compatible. There are no reasons duplexes and single-family dwelling can't be adjoining.

In summary, we think this is a good buffer and we think that we could only get four units on here, two duplexes, which is about what everybody else to the north, if they subdivided their property they would get four units on there; 5,000 square foot lots. If you look at low-density residential density, that is usually one to six acres. If I had the lot up on Dubon and Westfield, and wanted to subdivide that into 5,000 square foot lots I could have roughly eight units. I could exceed the low density residential anywhere to the north because those lots are roughly 1/2 acre.

I want to say when have we not encouraged infill? This is truly an infill project. It has never been built on. The houses around it have been built on years ago. They have been well maintained, and prior to the expansion Kellogg and these other business coming down, they have maintained themselves pretty well. When have we not encouraged infill? When have we not used different zoning categories to buffer other zoning categories? When have we not encouraged efficiency in land design? Maybe it makes sense to put them together rather than four separate units, and when have we not encouraged diversity in housing types? I am not saying to put in assistant living, which is down on Seville and seems to operate in a single-family neighborhood quite well, but I am talking about two duplex units on this site. That is all that is going to fit. The only thing I do see different in this situation is interior walls. Instead of having two houses 12 foot apart, I have done that to them twice.

JIM BARBOUR, 1355 Keith, Wichita, KS Mr. Smythe said he was going to butt the houses together, I thought we had a code on fire that you had to have six-foot between houses or 12-foot between houses.

DUNLAP I think his application is the thought a duplex is one wall between two units.

BARBOUR How tall will these duplexes be?

DUNLAP You tell us what you want us to hear.

BARBOUR Over on Byron they put in an eight-foot wall on account they are talking about a motel. Duplexes, where they wouldn't be looking in to the other people's houses are different; so that was the reason for my question. You talk about Dubon from Westfield on north or that on Dubon there is no setback on that property and that is on City property. There is a lot going on right now on trying to deal with getting a wall, getting it paved; they are wanting to pave it and if I remember right you need 51% participation, four houses up on each street. Probably 80% of those have lived there 40 years or longer and retired, and I don't think they will get 51% to pave it.

GAROFALO Mr. Barber, are you opposed to the application?

BARBOUR It depends on the height of these duplexes. This says 35-foot in height. We are not talking about a building in there 35 feet tall are we?

GAROFALO That is something we will have the applicant answer later.

GARY L. LEMBKE, 1335 S WESTFIELD, WICHITA, KS 67209 I live in the lot to the west of this property. My main concern is my property value. Last year they came through and stripped off all those businesses on the front of Dubon, and we had a fairly decent wall going through there. Now from talking to Mr. Dugan, himself, the City has swapped property with him. They wanted some of his property, so they have given him the rights to that property in front which he will be selling off as commercial. We are not sure what is going to go in front of us. Mr. Dugan says no fence. He said if I want to put a chain link in there I can. If I want to leave it open I can. If I want access on this side I can. So I don't think there are a whole lot of regulations that are going to go on the south.

Last year I protested my taxes because two years ago it went up \$40,000. I am a realtor and I just sold a house right at the corner of Beaumont and Westfield. I took in a comparison of like 20 houses that the City has taxed equal to my mine. They are all in the middle of really established neighborhoods but I was told that mine is just as nice as theirs even though I have possibly a bar or strip-joint to the south of me, and now I am going to have a retail property on the other side of me. As a realtor I can tell you, living across the street from a duplex or two duplexes is not going to increase my property value, and if anything it will lower my property values. Mr. Smythe was also talking about subdividing this and you could put five houses per lot in a 1/2 acre. This is an old established neighborhood with really large lots. All of us bought down there because we like the really large lots of that neighborhood. There is not a lot of crime there.



Dubon is a dirt street, and I would guess that they would have access on Dubon because there is not enough property there on Westfield to make a drive. If they come out on Dubon, Dubon is dirt going east, west, and that is really the fastest access to get out to Kellogg. So if it doesn't get paved, then you are looking at a large amount of increased traffic on a dirt road.

BARBARA BARBOUR, 1355 S. Keith, On the issue of having duplexes in our neighborhood, I have been a homeowner here for 37 years and all the homes in that area are single, there are a few tri-levels. I am opposed to having the duplexes no matter how well they are kept, no matter how short they are. It will affect the property value. We were approached by the landowner of the area south of Dubon from Seville over to Holland's property and we were told that if we didn't make the decision for his moving his property line into the middle of Dubon and making an alley way out of Dubon that he would recommend to the City to reopen Keith, the area north and south back to Kellogg to the off ramp. It was that way when I bought the home so I don't mind having the road opened up. Just recently the City has come in and put up a ditch. Prior to that the last three years the water has not drained off. The first time in 37 years when it rains it backs up into our yard and we are the second house north of Keith, and the road is at such an angle we are less than 150 feet from Dubon. I don't want to see our neighborhood changed from single-family residence to a multiple family residence.

SHERMAN Can you show me where Keith Street is?

BARBARA It would not be in this view. This is Westfield. Keith would be one block west. The streets go Seville, Keith, Westfield, Byron.

DUNLAP Terry, how tall will this building be?

SMYTHE Currently, today single-family zoning is the district all around here; they can build up to 35 feet. We are not asking for any more than what the single-family homes all around here currently have today. What are saying 35 feet because that is what everybody else can do out there today.

DUNLAP Do you have a rendering or a plan what this might look like?

SMYTHE I did a little sketch.

DUNLAP You don't have elevations?

SMYTHE No, we do not. Again, this is infill. This is a piece of property that we are looking at; how it is reflecting the changes that have occurred out there along Kellogg, and all the old businesses that are north of Kellogg and Dubon, and the hotel complex over there on Tyler. Changes are happening out there. This is a vacant lot. We are really not asking to do anything more than what everybody else could do out there and that is to re-subdivide their property into different configurations. Everyone out there today, without rezoning, could subdivide their property and build anywhere from 3-4 units on a 1/2 acre. Interior lots would be less because you have to provide a street, but if I am on the corner of Beumont and Westfield, and I have a 1/2 acre I can put in four houses today. Different than what is out there today. It wasn't build 30-40 years ago; things are changing. If everything south of Dubon is going to be a cluster then I think we need to look at some proper buffering for the houses to the north. I believe that is what these duplexes will do. We are talking about zoning today, we are not talking about rental, or rental people, or type of ownership, those discussions should never come into zoning.

GAROFALO Has your client attempted to market this for single-family?

SMYTHE I have no idea. He has had it in his possession for years.

AUDIENCE He hasn't (tried to market it).

SMYTHE I would certainly hate to have to market this as single-family and put a house on it and find out that didn't work.

MCKAY Dale, it is bothering me that the owner of the commercial wouldn't have to put a fence between the two properties because there is a street there.

MILLER That is the way the Code is written.

MCKAY If they are going to use that as an access street does it have to be paved?

MILLER Well, since it is already platted, and zoned, I don't know how we would get paving out of them.

MCKAY From the business, you can't come out on a dirt street or a sand street, it has to be paved.

MILLER Maybe Public Works has a way to extract it, but we wouldn't.

MCKAY Is that right or not?

MILLER I don't think that is accurate.

MCKAY In the County I know it is not but in the City I thought if you came off of commercial or whatever it is it had to be paved.

MILLER Unless the City Council could figure out a way to order it in or include it in the CIP or someone asked for a benefit district I don't think you could force the property owner to pave that.

MCKAY My only concern was that because he does something he would force the other people the north to have to pay for paving.

MILLER I don't think so.

MARNELL When I looked at this I was surprised that staff recommended this for denial. I look at that as a large lot setting there with that undeveloped commercial property across there in General Commercial and Limited Commercial, and I think the plan for developing this with the duplex zoning is a reasonable plan and a reasonable use for that. I think it will provide buffering between there, and otherwise I think it will be vacant property and it will be hard to sell as a single-family lot. I will not be supporting the staff recommendation for denial.

BISHOP I think this would be perfect for open space. This would be a great place for a park. However that is not what we are asked today. I would like to ask the applicant if there would any willingness to have some discussion about some conditions that would ensure that any proposed duplexes would fit with the neighborhood. There are duplexes with garages; there are duplexes with driveways with just gravel tossed out there.

SMYTHE I have not specifically asked that of the owner of the property, I am hesitant to enter into any kind of compromise on our property if none of the other properties to the north have that same compromise. Yes, I could build at 25 feet, but everybody to my north has the ability to go 35 feet and everyone else to the north can redevelop without garages, and I think unless there is a mutual agreement between us and all of the surrounding neighbors I am hesitant to even bring that up.

BISHOP The discussion is about 25 feet, 35 feet; we are talking about one story, are we not. We are not talking about up and down duplexes?

SMYTHE Just like the single-family, the only thing that the code talks about is a 35-foot height restriction on buildings. So whether you have a 1-2 story building anything is possible in that height restriction to the Zoning Code.

BISHOP You can have two story duplexes?

SMYTHE Yes, with a basement.

BISHOP A duplex unit; you are talking about four units. You couldn't put an apartment in there with four units as one building?

SMYTHE No that would take a Conditional Use to do a tri-plex or four-plex. Here we are talking about two duplex units.

BISHOP But they could be two stories?

SMYTHE Yes, as could the homes to the north.

BARFIELD Mr. Smythe made two points. He mentioned that this is about zoning and I agree with him. He also mentioned that we encourage infill but we encourage infill that fits in with the current zoning. This proposed infill does not fit the current zoning.

**MOTION:** To concur with staff recommendation and deny the application.

**BARFIELD** moved, **BISHOP** seconded the motion.

SHERMAN If we go with the staff recommendation and deny the application, he could still put one duplex there?

BISHOP No, just one single-family house.

**SUBSTITUTE MOTION:** To approve the "TF-3" Two-family zoning for this property.

**MARNELL** moved, **WARNER** seconded the motion.

MCKAY Mr. Smythe, this property has to be platted into two lots or are you going to do it with a lot split?

SMYTHE We don't know at this point, whether we are going to re-plat or do a lot split.

MCKAY You can put one duplex on it the way it is at the present time?

SMYTHE No, today all I could put in is one single-family house or re-plat the property.

MCKAY No, I am saying if you don't re-plat and you get the zoning today, you either split the lot or replat.

SMYTHE Correct if I get duplex zoning I can put one duplex on it or split it and put two duplexes on it.

BISHOP I am not going to support the substitute motion but I am troubled by the fact that we don't know what is going to be built, and if it going to fit in the neighborhood, and it is going to be surrounded by single-family house with a particular character and we have no idea whether this will fit with it or not.

WARNER I didn't know that we were a design committee.

**SUBSTITUTE MOTION CARRIES 10-3. (BISHOP, BARFIELD, GAROFALO, OPPOSED).**

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7. **Case No.: ZON2005-13** – Steve Kelley (applicant); Terry Smythe, Baughman Company P.A., (agent) Request Zone change from “SF-5” Single-family Residential to “LC” Limited Commercial on property described as;

Lot 5, Block C, West Central Gardens Addition, Wichita, Sedgwick County, Kansas. Generally located at the northwest corner of Central and Gilda.

**BACKGROUND:** The applicant requests LC Limited Commercial zoning on a .47-acre site housing a former church, currently zoned SF-5 Single-family Residential, generally located north of West Central and west of Gilda, just west of the Central and I-235 intersection. The proposed use is for commercial development. North of the application area are SF-5 zoned single-family residences. South of the site, across Central, are LC zoned restaurants, office uses, and auto service. East of the site is an LC zoned auto service use and I-235. West of the site are LC zoned office uses.

**CASE HISTORY:** The application area is platted as Lot 5 the West Central Gardens Addition.

**ADJACENT ZONING AND LAND USE:**

NORTH: “SF-5” Single-family Residential	Single-family residential
SOUTH: “LC” Limited Commercial	Restaurant, office, auto service
EAST: “LC” Limited Commercial	Auto service
WEST: “LC” Limited Commercial	Office

**PUBLIC SERVICES:** Current traffic counts on this segment of Central are 36,657 vehicles per day. Central is a five-lane, section line arterial street at this location with a 100-foot right-of-way (ROW), which does not meet the Access Management Policy ROW requirements. The 2030 Transportation Plan indicates that this section of Central will increase to a six/seven-lane arterial. However, the 2002-2011 CIP does not indicate any plans for this portion of Central. A federally funded traffic study for the Central/I-235 interchange is under KDOT management and will begin in July 2005, the study is expected to take 18-24 months, and does not have construction funding. Gilda is a two-lane local street with a 60-foot ROW, which also acts as an off-ramp street to I-235. The application area has one point of access from Gilda.

All other normal public services are available at the site. Existing utility easements at the site are 10 and 16 feet; these are under the City standard of 20 feet.

**CONFORMANCE TO PLANS/POLICIES:** The “Wichita Land Use Guide, as amended 1/02” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the application area as appropriate for “public/institutional”, reflecting the site’s previous use as a church.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The Unified Zoning Code (UZC) would require compatibility setbacks between non-residential and residential development, as well as a screening requirement from residential zoning and uses. Conformance with the Landscape Ordinance at this site will be required in order to develop on the site.

**RECOMMENDATION:** This site is not conducive to single-family residential development; LC zoning and non-residential uses surround the site along the Central corridor. The proposed zone change is not in complete conformance with the Land Use Guide, but is in conformance with the recommended Commercial Locational guidelines of the Plan. Potential negative effects from commercial uses at the site on the residential neighbor to the north would be mitigated by existing codes. Existing codes would require compatibility setbacks, screening, landscaping, limit noise, and prohibit certain uses within 200 feet of residences.

LC uses at the application area would increase traffic on this section of Central, which has some of the highest traffic counts in the City. The ongoing Central/I-235 interchange traffic study will likely result in improvement recommendations for this location. The City Traffic Engineer recommends dedication of 10 feet of ROW at the application area, bringing it up to Access Management Policy requirements. Likewise, the City Subdivision Engineer recommends easement dedications, bringing existing utility easements up to City standards of 20 feet. This is a small site, but each of the discussed dedications would be necessary for infrastructure in this area to support continued and expanded commercial activity.

MAPD been contacted by one residential neighbor, who was not opposed to the case.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to:

1. Dedication of ten feet of right-of-way on Central.
2. Dedication of five feet of utility easement in addition to the existing five feet of utility easement along the north boundary of the site.
3. Dedication of two feet of utility easement in addition to the existing eight feet of utility easement along the west boundary of the site.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposed zoning and land use is not out of character with nearby LC zoning and uses fronting Central. The proposed development would be buffered and screened from the abutting residential property.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be used for a church as currently zoned, as it once was. However, the site is not conducive to single-family residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development could have negative effects on the single-family residence north of the application area. Existing codes would require compatibility setbacks, screening, landscaping, limit noise, and prohibit certain uses within 200 feet of residences.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the site as appropriate for "public/institutional" development, which is not in conformance with the application. The proposed development is in accordance with the Commercial Locational Guidelines of the Plan.
5. Impact of the proposed development on community facilities: The proposed commercial development could increase traffic at this location on Central and Gilda. Dedication of right-of-way will allow this portion of Central to meet Access Management Policy dimensional requirements. Increased commercial development at this location requires infrastructure that can be maintained, requiring an increased utility easement dedication to meet City standards at this location.

MCNEELY What will be discussed today is what some of the public services will be. The traffic counts on this section of Central are 36,657 vehicles. Today this is a five-lane sectional arterial at this location. Currently it has a 100-foot right-of-way for those five lanes, and that is 20 feet short of the Access Management Policy recommendation.

TAPE CHANGE GO TO TAPE 3 SIDE A

HENTZEN Condition Number Two and Condition Number Three deal with the same direction, north, and then you mentioned west when you said it should one of those changed to west.

MCNEELY Yes, Condition Number Three, should say the west boundary of the site.

MARNELL Jess, are there any utilities in the utility easement to the north of this property?

MCNEELY Yes, I believe there is sanitary sewer. We did check with the subdivision engineer and she looked into it.

MITCHELL Jess, sanitary sewer is in the north easement, which way is it running?

MCNEELY I believe it is in the north and west utility easement.

MITCHELL It runs along the west side and then turns and goes east along the north boundary?

DUNLAP Mr. Smythe, could you show us on the map where the sanitary sewer line is.

SMYTHE The currently sanitary line comes down here and terminates mid-point; connects here (points on the map).

DUNLAP Anymore questions for staff?

TERRY SMYTHE, BAUGHMAN COMPANY Again we are talking about an infill project where you can't automatically apply all the new standards that constantly change across the board and make it a viable infill development. These are small sites that are under utilized or vacant, and we need to figure a way to make them work economically viable. KDOT is just starting to look at the study to figure out what they want to do with Central and I-235 and Gilda, nobody knows. Frankly, they don't know if Gilda is going to remain the same or if it will be re-routed towards the Big Ditch or if the development along the east side of Gilda will come out or even this property and everything towards the north will go out. They are getting ready to study that. We are not going to wait until they figure out how to study it, how to buy it, when to get a hold of it. We are going to develop it, and whatever happens, happens. We don't want to wait for that long period of time.

Jess had indicated that staff would like to see the additional feet of right-of-way along Central. As all of us know the bridge at Central is tight, the turning radius, left turn lanes, right turn lanes; it is a nightmare at rush hour traffic. Until the bridge gets redeveloped, tore out, and widened I don't think you can see any improvements of Central until that bottleneck gets taken care of. We do not want to give up the extra 10 feet mainly because the KDOT study has not indicated what they want to do. Whether they want this piece of property as well as the rest of them, we don't know. We would rather develop this property economically, and make it viable, and let us keep the 10-foot dedication; and if at some point and time we get condemned, and the east side of Gilda gets condemned, so be it. We want to work at it at that point and time.

The current easements; we have one along the north side, and one along our west side. The sewer lines and the utility lines that are servicing today are working, and there has been no proof that they are ever going to be needed to redevelop other than our site. If they ever have to dig up the sanitary sewer line, they don't dig them up. They basically go down and realign those sewer lines. They pull it from one side of the street to the other. If the sewer line today functions properly in those width of easements, I am going to say why do we need to give additional easement up on a piece of property that is highly confined as this infill piece of property is?

The two issues that we want to discuss and ask for your opinion is the additional right-of-way for Central, and the additional request for the easements along the north and west side.

MITCHELL There is nothing in the staff report addressing access to Central. There is a curb cut there now. It is cabled off. What is the planned use of that curb cut on Central?

SMYTHE The preliminary concept shows the existing access opening to move towards the west, further away from Gilda. So we would have one opening on Gilda, kind of in the general location that you see the rough one today, and then the one on Central, we would move almost to the far west side of the property further away from the intersection.

MITCHELL Staff has not commented on that?

SMYTHE No.

MITCHELL You don't anticipate any additional utilities being needed for what is proposed for development?

SMYTHE This is going to be a single building.

WARNER What is the width of the existing utility easement?

SMYTHE The one on the north side is 10-foot, five on our property, and five on the home to the north. The one on the west side is eight foot on our side, eight-foot on the other side. So we have a 16 going north/south, and a 10 going east/west. We attempted to talk to the landowner to the north to see if he wanted to participate in this rezoning, but at this point and time he did not want to participate.

GAROFALO Jess, what about the access on Central, was that brought up to the Traffic Engineer?

MCNEELY The Traffic Engineer was not aware that there was access from Central. He was only aware of the access from Gilda. The Access Management Policy wouldn't allow access, by the spacing requirements, from Central, given the narrow width of this lot and its frontage on Central.

GAROFALO So the Traffic Engineer actually hasn't said anything about it?

MCNEELY I believe the Traffic Engineer was under the impression that there was no access from Central.

MARNELL Would that be the case if there was an existing access to Central?

MCNEELY If there was existing access to Central then there is existing access to Central, unless there is something that I am not aware of.

MCKAY Did anybody go out there and look at it? They said he couldn't get access but probably within 10 feet of this area it looks to me that there is already a driveway already off of Central Street. There is also one to the west of the existing building.

MCNEELY The City Traffic Engineer would recommend complying with the Access Management Policy. If this was something that we omitted, he would ask for dedication of access control along Central.

MCKAY How can he do that?

DUNLAP If that address is Central, how is he going to do that?

MCNEELY I know that we have recommended that on cases in the past. They do have access from the side street, Gilda.

MCKAY This property is not going to be re-platted, which it evidently isn't and it is not one of the conditions.

BISHOP I just heard him add a fourth condition.

MCNEELY That would be up to the MAPC to add a condition of approval.

JOHNSON Where would there be 120-foot of right-of-way on Central? I know that we looked at some cases just east of this and didn't go ahead and do the dedication.

MCNEELY I would have to ask the Traffic Engineer. Here I asked the Traffic Engineer and he made the recommendation for the additional 10 feet of right-of-way, and we were going to go with his recommendation on that.

MILLER If you go to the zoning map it will give you some idea of what this is.

MCNEELY It would be 10 feet along Central right here, as you can see, and we brought it up to the Traffic Engineer. This guy's frontage is completely consistent with all of the other properties right along Central.

JOHNSON Dale, weren't there some properties that we done just east of here that we ended up not requiring the dedication because of the depth of the lot and getting a building and parking in the front?

MILLER I don't remember.

**MOTION:** To approve the application without access control on Central, without the dedication of 10 feet of right-of-way for Central, and without any additional dedication of utility easements.

**MITCHELL** moved, **HENTZEN** seconded the motion.

**BISHOP** If I understand the motion correctly that means that there would be no access control on Central?

**DUNLAP** Yes, that is correct.

**BISHOP** Commissioner Mitchell, may I ask what is the purpose of opposing the dedication of right-of-way is?

**MITCHELL** Because I don't see any benefit for the City to do that for a small portion of this whole area that has to be redeveloped. I think it is a taking.

**BISHOP** That is what I thought, and I would like to submit that the approval of the zoning change in essence is a giving and what that means when we do have to come back and reconfigure Central is that we will have to pay for that, and that the taxpayers take it every time.

**MCKAY** If you look at the plat up there the only people who have additional right-of-way other than straight across there is the farthest one to the west, and one at the corner of Boyd and Central, and those are the only two along the whole thing that have been asked for additional right there.

**MARNELL** I think it is wrong for the City of Wichita to steal land from landowners. If the City needs that land either now or in the future the City should pay for it. They should not simply take advantage of a process of a person trying to make the best use of their land and by zoning it accordingly, and if the zoning fits that would be proper to then use that opportunity to in fact steal land. Because they will come back if they are going to expand Central, and truly go through there then they could condemn the strip of land that they need all along there, and go through a legal process and pay people the value of that land, and including the owner of this land.

**GAROFALO** I can agree with the motion on everything. The 10 feet of right-of-way, I don't see any point in it now if the State is going to come along in a few years and reconfigure that whole area. I do have a problem with the Access Control on Central because that is a bottleneck there that to add another entry way right there where everybody is coming off of the highway is a hazard.

**JOHNSON** Terry, do you see the easements affecting your development?

**SMYTHE** No, I believe that we could develop the property with the existing easements today.

**JOHNSON** I mean if we granted additional easements?

**SMYTHE** Yes, it would reduce the size of our building, and that gets back to the economic viability of some of these infill projects.

**JOHNSON** What is the compatibility setback on the north?

**SMYTHE** To the north you have zoning setbacks, compatibility setbacks.

**JOHNSON** I am curious of how that easement would hurt you.

**SMYTHE** I am just saying by the time you look at the zoning setback to the north, the rear yard setback, and the zoning compatibility setback of the north, we probably have pushed it 20-25 feet to the start of the building.

**JOHNSON** I can see where the street right-of-way can, but I am curious about the easements how far your would be sitting off the west and how far off the north.

**SMYTHE** The way that he has it designed now we are right up to the easement.

**MARNELL** I do have a problem with the Access Control, this is an extremely busy area, and the last thing that I would want to see is us making it worse. The difficulty is that this thing already has access to Central and it is a commercial piece of property I am not sure access to Gilda manages the same considering what is along there currently but I would not want to see the accesses in anyway, if anything reduced to maybe one opening on that one lot.

**MITCHELL** There is a stop light at Gilda so if it was a right turn only I don't see an interference with traffic by access onto Central, trying to get out with a left turn there would be suicide.

**MCKAY** Commissioner Mitchell, are you saying that you want to make that part of your motion that it be access out onto Central would be to the right only?

**MITCHELL** No.

**MARNELL** Commissioner Mitchell, would you amend your motion to limit the access onto Central to one opening.

**MITCHELL** Yes.

**MARNELL** Would the second agree with that?

**HENTZEN** Yes.

**AMENDMED MOTION:** To approve the application without access control on Central with the exception of only one opening on Central, without the dedication of 10 feet of right-of-way for Central, and without any additional dedication of utility easements.

**MITCHELL** moved, **HENTZEN** seconded the motion.

JOHNSON I want to state that if the easement would have been included I was agreeable to the right-of-way.

**MOTION carries 9-4 (BISHOP, JOHNSON, GAROFALO, SHERMAN, opposed).**

8. **Case No.: CON2005-11** – Scrap Leasing LLC c/o Scott hall (owner/applicant); MKEC Engineering Consultants c/o Gene Rath (agent) Request Conditional Use for a wrecking/salvage yard on property zoned "GI" General Industrial on property described as;

Lots 2 & 3 and Reserve A, Northern Industrial Addition, Wichita, Sedgwick County, Kansas. Generally located North of 29th Street North and west of Ohio.

**BACKGROUND:** The applicant is requesting a Conditional Use to permit a wrecking/salvage yard on a 16.5 acre platted tract located north of 29<sup>th</sup> Street North and west of Ohio. The subject property is zoned "GI" General Industrial, and a wrecking/salvage yard may be permitted by a Conditional Use in the "GI" district.

The applicant submitted the attached statement and site plan that describe and illustrate the proposed use of the subject property. The applicant indicates that the subject property will be used for processing and recycling metallic scrap materials. The materials primarily will be surplus industrial machinery that is too large to be sent directly to scrap metal buyers. The materials will be cut up and sorted for shipping via rail and truck to scrap metal buyers.

The surrounding area is characterized by heavy industry. All of the properties surrounding the subject property are zoned "GI" General Industrial. Most of the immediately surrounding property is undeveloped, except for soccer fields located to the north, a grain elevator located to the west, and an office/warehouse located to the southeast.

**CASE HISTORY:** The subject property was platted as part of the Burlington Northern Industrial Center Addition in 1984. The subject property was approved in 2002 for a temporary Conditional Use (CON2001-00069) for a rock crusher. The temporary Conditional Use has since expired.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"GI"	Soccer fields
SOUTH:	"GI"	Undeveloped
EAST:	"GI"	Undeveloped
WEST:	"GI"	Grain elevator

**PUBLIC SERVICES:** The subject property has access to Ohio, a paved local industrial street. Municipal water and sewer services are available to serve the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to generate travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development.

The 21<sup>st</sup> Street North Corridor Revitalization Plan indicates that the preferred long range (20+ years) use of the subject property is for general industrial use. The plan indicates that rail dependent and heavy industrial uses are allowed in the general industrial category. The plan also has a shorter range land use guide (less than 20 years) that conflicts with the long range preferred use of the subject property. The shorter range land use guide indicates that the subject property's preferred use is for light industrial/flex use. The plan indicates that the light industrial/flex category is intended for smaller industrial uses in buildings with a higher level of articulation, materials, and colors and on sites that are well landscaped with little or no outdoor storage. Since the plan does not give any indication as the reason behind the conflicting short-range and long-range preferred uses of the subject property, planning staff is recommending approval of the request because it is consistent with the long-range preferred use of the property. Additionally, the applicant has proposed conditions that are intended to make the subject property more compatible with light industrial/flex uses in the vicinity.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall authorize the operation of a wrecking/salvage yard for the processing and recycling of metallic scrap materials. In no event shall the Conditional Use authorize an automobile wrecking/salvage yard or the storage or bailing of solid waste, scrap paper, rags or junk (excluding metallic scrap materials).
2. The subject property shall be enclosed on the north, south, and east by a concrete wall not less than 14 feet in height and on the west by a minimum 14-foot high solid screening fence having cracks and openings not in excess of five percent of

the area of such fence. The concrete wall and screening fence shall be a non-bright color. The concrete wall shall be located west of the 35-foot building setback line. Access gates are permitted in the concrete wall at the points denoted on the approved site plan. The access gates shall provide solid screening, shall match the height and color of the concrete wall, and shall have an automatic mechanism which keeps the gates closed except for when in use.

3. The 35-foot deep area between the concrete wall and the street right-of-way shall be landscaped with turf grass and trees. Trees shall be planted at the rate required by the Landscape Ordinance for a landscape street yard. The landscaping shall be irrigated and shall be planted and maintained in general conformance with a landscape plan approved by the Planning Director prior to the issuance of a building permit for the concrete wall.
4. An on-site parking area paved with asphalt or concrete with a paved access drive to Ohio Street shall be provided for employee parking. The parking area shall provide a minimum of 25 parking spaces prior to the commencement of operations, and a minimum of 50 parking spaces shall be provided prior to expansion into the "Future Expanded Operations" area shown on the site plan.
5. The access drive to the scale for the drop-off of scrap material shall be paved with asphalt or concrete to both access points to Ohio Street. Unpaved drives shall be an all-weather surface.
6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the issuance of a building permit for the concrete wall. Prior to expanding operations into the "Future Expanded Operations" area an additional revised site plan shall be approved by the Planning Director prior to the commencement of operations in the expanded area.
7. Scrap materials shall not be visible from ground-level view from Ohio Street or abutting properties.
8. Scrap materials are to be piled and stored in an orderly manner with an exposed perimeter as specified by the Environmental Health Department to prevent rodent harborage and breeding.
9. The applicant shall maintain at all times an active program for the eradication and control of rodents.
10. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.
11. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the wrecking/salvage yard shall be provided by fire lanes per the direction and approval of the Fire Department.
12. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by the Environmental Health Department and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Health Department.
13. Notification shall be given to the Environmental Health Department of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with the Environmental Health Department. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Health Department.
14. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.
15. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of a wrecking/salvage yard.
16. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by heavy industry. All of the properties surrounding the subject property are zoned "GI" General Industrial. The proposed wrecking/salvage yard is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "GI" General Industrial. A wrecking/salvage yard may be permitted with a Conditional Use in the "GI" General Industrial district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on nearby property should be minimized by the recommended conditions of approval, which include screening and landscaping the wrecking/salvage operation from nearby commercial/industrial uses. While the subject property is visible from I-135, the view of the subject property is not direct due to existing roadway features and landscaping, and with the required on-site screening and landscaping, the subject property should not present a negative visual image of the community to the traveling public.



4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses should be located in close proximity to support services and provided good access to major arterials, truck routes, belt highways, utility trunk lines, along railroads, near airports and as extensions of existing industrial uses. Industrial uses should be located away from existing or planned residential areas, and sited so as not to travel through less intensive land uses. The proposed site meets these locational guidelines for industrial development.

The 21<sup>st</sup> Street North Corridor Revitalization Plan indicates that the preferred long range (20+ years) use of the subject property is for general industrial use. The plan indicates that rail dependent and heavy industrial uses are allowed in this category. The plan also has a shorter range land use guide (less than 20 years) that conflicts with the long range preferred use of the subject property. The shorter range land use guide indicates that the subject property's preferred use is for light industrial/flex use. The plan indicates that the light industrial/flex category is intended for smaller industrial uses in buildings with a higher level of articulation, materials, and colors and on sites that are well landscaped with little or no outdoor storage. Since the plan does not give any indication as the reason behind the conflicting short-range and long-range preferred uses of the subject property, planning staff is recommending approval of the request because it is consistent with the long-range preferred use of the property. Additionally, the applicant has proposed conditions that are intended to make the subject property more compatible with light industrial/flex uses in the vicinity.

5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

SCOTT KNEBEL Planning staff presented the staff report, and added that the applicant's proposed screening and landscaping are consistent with Goal Four of the 21<sup>st</sup> Street plan, which indicates that adequate screening of outdoor storage areas is paramount for heavy industrial areas.

MITCHELL Scott, Conditions Item 12 and Item 14 of the staff report, I would like some way for the Environmental Health people who will be doing the inspections to have some input into the plan on how that drainage will be controlled.

KNEBEL You are requesting on Item 14 that the drainage plan would need to be approved by the City Engineer and City Environmental Health?

MITCHELL Yes.

KNEBEL Sounds reasonable to me.

DOWNING In the April 5, 2005 letter that was signed by Mr. Scott Hall, the second paragraph says that the primary purposes will be, and it lists recycling. Do we know of any other purposes? This is just the primary purpose, or am I reading too much into that phrase?

KNEBEL I will let you ask the applicant that question. The Conditional Use request would just address that purpose, but General Industrial zoning does permit other uses.

DUNLAP I have been contacted by Mr. Scott Hall, but I did not make any commitments to him, nor did it effect my opinion.

SCOTT HALL, SCRAP LEASING, LLC, 1221 E. MURDOCK, WICHITA, KS 67214 I think when we mention scrap recycling we all have a stigma in our minds. Even I do. It conjures pictures such as this (scrolling through pictures of scrap yards). Our sole intention here is the consolidation of three different locations, the K-42, 1221 Murdock, and also we are under contract with the railroad to cut up railroad cars beneath that Kellogg area, very close to where your new arena is proposed to be. Those operations would all cease and be consolidated here. Our intention is simply to consolidate this into the correct zoning area, and do it in a conducive manner to the area. We have volunteered the 14-foot high concrete solid fence.

Mr. Hall begins to familiarize the Planning Commission to the area with PowerPoint material. I wish to re-iterate that this is not an automotive salvage facility, and there will not be stacks of cars, or trucks. That is not what we do. So rodent control, and things of that nature, I don't think that will be a problem, because they will not like that chopped up metal very well.

The main point of consideration is that we are simply trying to consolidate these other areas, which are unsightly, into an area that is walled up, behind the fence. I believe that the businesses that run down 29th and Ohio are service-orientated business, distribution, with one or two retail-type of facilities that are depending on some degree of retail traffic.

DOWNING Mr. Hall, back to this letter, it talks about the primary purpose of this facility. Are there any other purposes?

HALL No, it is the sole consolidation, to try and get this in one area.

BARFIELD Mr. Hall, I understand that rail service will be vitally important to this business, is that correct?

HALL That is correct.

BARFIELD In your letter you state that you have had conversations with the railroad and you have a written letter from them stating the feasibility of the spur. Do you have anything that says that they have committed to the spur?

HALL Yes, we do have a document stating that they will allow us to come off of that east track to go in there. We met with them again this morning. Directly to the east on the east side of the grain elevator are some derelict buildings that are owned by the

railroad. We made a deal this morning that if this goes through that we will go in and demolish all of those buildings for a trade for the use of the spur tracks on the west side, so those buildings will go away also.

GIBBS I have a comment. The proposed use that described the disposition of large manufacturing tools, there is a need for that type of service. The disposition of it currently is rather restrictive because most of the scrap yards don't have the facilities to handle it.

HALL If you go down to 29<sup>th</sup> Street you will look down to the south at Glickman's, and you will see about 50 machine tool type items sitting out there. They have been there a long time because those facilities do not have a good method to process them, and furthermore, they do not have a good ability to unload them.

WARNER What kind of noise are we talking about?

HALL We will generate some noise. We will have track machinery, and you know what those sound like on a construction site. If you go down Kellogg, you will hear those machines squeaking away. We will have hydraulic shears that will pinch metal, but in all reality it will not be loud in comparison to a railroad switching yard which is 200 feet to the back of us. A railroad switching yard is totally known in the industry as one of the loudest generators of noise pollution that there is. Ours is small to what is already existing.

GAROFALO Are you in agreement with all these conditions?

HALL We are concerned with Condition Two. The last sentence that states that the access gate shall provide solid screening, shall match the height and color of the concrete wall, and shall have an automatic mechanism which keeps the gates closed except for when in use. The part there about the automatic mechanism, if you go to the site plan, and if you refer to Lot 1 and come back, there is a two-foot by eight-foot tall concrete wall, and that is to act as a buffer. When this gate is open and you are driving down Ohio in either direction that is providing a buffer that you can't see this metallic material back in there. We have to have access to come in the driveway, turn and go north over the scales. Now the additional drives to the north, which there are three can remain closed until any truck traffic, or in or out traffic, needs to go out. We can see those vehicles, but with a 14-foot high wall, if the gates are closed, we won't even know who is out there trying to come in if there is an in-bound semi. If we have a push button for them to ring a bell to let us know that they are there, then we will have a truck stopped in the middle of Ohio. I don't think that will work. I think that gate has to be open during business hours from 8-6 p.m.

BARFIELD Immediately to the south of you is the car crushing facility over there?

HALL I would say that is about 1/4 mile west, and 1/2 block south.

BARFIELD Would the noise that this facility would be generating be equal to or more than that?

HALL It will be less noise.

LARRY HIGGINS, DRYWALL SUPPLY INC., P O BOX 9528, 3420 N. Ohio, WICHITA, KS 67277 I am one of the owners of the Drywall Supply Inc. I have a book of pictures to present to the MAPC today for your review and for the record. We sell drywall products at the retail level, and our building not only serves as a warehouse but also our showroom and retail outlet, and a scrap yard does not fit the character of our neighborhood. (Mr. Higgins goes through the book of pictures in a slide show presentation, and describes the character of the neighborhood.) To allow this operation would be a step backwards. This would be bad policy for the neighborhood. These scrap metal operations that are located in the City, we see an obvious trend, and they are not located in vibrant developing areas with new businesses, and new construction, like our neighborhood. They are not located in clean, well maintained industrial parks. We do not want our area to be polluted with this scrap operation. I ask that you deny this Conditional Use request.

TOM OLSON, HOC INDUSTRIES, 3511 N. OHIO STREET, P O BOX 2609, WICHITA KS 67201-2609 We are just down the street from this proposed facility, and we are a packager and manufacturer of liquid products. Mr. Hall portrayed our business a little while ago on his slide show as being a storage trailer facility. Those are support raw materials and customer drop trailers for our manufacturing operation. All of our facilities are fenced with security fencing, and we have paved all of our property to eliminate dust. We believe this business will be incompatible with what the industrial area was first designed for, and this business will downgrade the value and the appearance our business and its image to our customers. Approximately 90% of our business is sold to customers from out of state. We have corporate visitors from out of town, and all of our sales offices and management offices are at that facility as well as the manufacturing. We feel that the proposed wrecking/salvage yard will hurt the integrity of the industrial park and is not a fit in this area, and respectfully request that you deny this application.

RICK LOWE, A & H ELECTRIC, 3030 N. OHIO, WICHITA KS 67219 We own the property that is right on the corner of 29th Street North and Ohio. Staff specifically notes in the report that the shorter-range land use guide indicated for this subject piece of property is for light industrial flex use. This piece of property is part of the 21st Street North Corridor Revitalization Plan. That plan created two new land use designations, the light industrial/flex use, which includes the subject property, and special opportunity areas, which includes a large tract to the east across Ohio. There is other land further north that would be better for this type of business.

DOUG CONNER, DRYWALL SUPPLY INC., P O BOX 9528, WICHITA KS 67277 We moved into the area in September of last year and built a new facility. The area that we are in now is a clean, attractive business neighborhood. Drywall Supply relies on consumer traffic coming in and out of our store, and I am concerned with this operation moving into our neighborhood. I am also concerned about the impact on the following businesses, Northfield School, Christian Worldview Library; Central Christian Community Church, which is building His Helping Hands for food distribution and Burton Stock Car Building. Let's do berms and nice landscaping, limit the height of the piles, and of the shears that will be coming in.

BARFIELD Are you aware of the fact that north of 21st Street between I-35 and Broadway there is a scrap metal business and there is a rock crusher? Those are all within a 1/2 mile of this proposed location.

CONNER No, I am not aware of that.

TYSON LANGHOVER Metro Express, 150 N. Main, Wichita, KS 67202 Metro Express is located at 3518 N. Ohio. We are very concerned about all the issues that have been brought up earlier today. This property, although zoned General Industrial, this neighborhood is a very well kept neighborhood, and it also has a lot of retail aspects. The salvage yard will not fit within the realm of the subject neighborhood. We are opposed to this application.

PAT HUGHES, ATTORNEY 155 N. MARKET, STE 600 WICHITA KS 67201-1034 attorney representing Drywall Supply. In an ordinary Conditional Use case you would be weighing and balancing the Golden Rules and making a determination from that weighing and balancing, and considering both sides of the issues, and what is in the best interest of the community at large. You are required to apply a different standard in this case before you can get to the Golden Rules. The Zoning Code in Section III.d.6.e requires that a precondition be met, and that is wrecking/salvage yards may be approved as a Conditional Use in General Industrial districts provided that such operation, in the opinion of the Planning Commission, will not adversely affect the character of the neighborhood. To approve this application you will need to find that a wrecking/salvage yard will not affect the character of the neighborhood at all, and I don't think you can do that.

The conditions that are proposed deal with the question of how this might be expanded in terms of materials other than metallic materials, but they don't preclude intensification over time in the areas that are designated in the site plan for future expansion. We could see shredders, balers, and those more intensive uses in the future unless we have a condition that limits the use of the site to the types of operations that are currently being proposed.

I would also like to talk about Condition #13 proposed by the staff. This condition creates the kind of confusion that was apparently created with the respect to the fence at the sandpit operation. It deals with what needs to be done when you have hazardous wastes that are being disposed of at the site. But hazardous waste cannot be disposed of on this site, because that would require a Conditional Use for hazardous use, which has not been applied for here. So the conditions should make clear that disposal of any hazardous waste is not permitted.

Finally, the concrete walls are not sufficient to meet the standards of buildings within the community. If this was to be approved, then the requirements for the concrete wall should be more stringent than simply that they exist. It is true that other salvage operations exist in the area south of here, but we see a consolidation of these sorts of industries together. They don't belong in this neighborhood that has the low intensity uses, as the landowners that have spoken today have indicated.

BARFIELD Can you tell me what is the height of the wall that was displayed at the applicants existing location on Southwest Boulevard?

HUGHES I can't, but looking at it appears to be 8-12 feet. The construction method is what I was illustrating. Simply stacking these large concrete blocks to form a wall is totally out of character with the neighborhood.

BARFIELD Staff did not recommend that type of wall screening for this location.

HUGHES The only condition, as I see it, is that we have a solid concrete wall, and it is not clear that would preclude that sort of a structure.

BARFIELD The applicant has volunteered to a 14-foot wall, which would be much different than what they had in the past.

HUGHES It may be stacking another row of blocks on that. The point is that having a concrete wall doesn't deal with the blight issue.

JIM SCHOELUE, GENERAL MANAGER, FASTENALL, 3040 N. OHIO, WICHITA KS 67219 We are wanting to expand our operation and employment, and one thing they look at is high traffic and change to an area where it becomes accessible to not only commercial and industrial but also to homeowners as well. With the proposed salvage yard this will be viewable to people on I-135, and that would change the character of the area. We don't know how many trucks will go through that yard, or how many trucks will that be coming in and out of this operation. There is a scrap yard and rock crusher south of here, but those businesses are accessible off of New York Street, and you have to turn onto 21st Street to get there. There are buffers around those businesses that we don't see this operation.

The staff recommendation for these findings is that the proposed salvage yard is consistent with the zoning uses and the character of the area. The area itself is a retail service oriented companies. The buildings are fairly new. Staff states that with the required landscaping and screening, the subject property should not present a negative visual image to the traveling public. Regardless of a 14-foot high wall, you will still see this from I-135. As far as the conformance of the requested change to adopt the policy, I think the opposing side has established that this does not meet the 21st Street Revitalization Plan for this area.

BARFIELD How many trucks travel that road from HOC on a daily basis?

SCHOELUE I would say probably 30 trucks, but they are not all HOC.

FRED WISE, YORK INDUSTRIES, P O BOX 19014, WICHITA KS 67204-9014 I do agree with Commissioner Gibbs, that we do need this type of scrap metal recycling in the Wichita area, but I don't want it in my backyard. We are a heavy industrial site, but if you would take a trip through our facility you wouldn't realize it. We have spent a lot of money to make our property attractive. We have spent about \$400,000 on landscaping. We bring customers in to sell our products. We sell to the U.S. and other countries, and they all come off of I-135, and this will be a huge eyesore. We would like to see this denied.

GAROFALO How close is your facility to your site?

WISE We are on the other side of the railroad tracks.

BARFIELD How do people access your facility?

WISE You can bring them in on 37th Street, but typically what we do with our tours is they get off I-135 onto 29th and go to St. Francis, and then go to our administration building.

BARFIELD The majority of your customers would not see this proposed facility?

WISE They would see it coming off of I-135, and they would see it from 29th Street. They have concrete proposed on three sides, and the backside is a fence. What type of fence is it?

SCOTT HALL We have all heard the visual impact discussions, and one point I would like to bring up this grain elevator right here. You can see those all the way from Woodlawn. From the elevated highway, you can see a lot of things. I do believe that we should clarify this fence. It can be a panel fence, or a poured in place decorative fence. Those block walls that they showed; we have no intention of putting that at this facility. All of the businesses out here have truck traffic and are transporting products.

BARFIELD Was the accessibility to rail services a primary reason you selected this site?

HALL Yes.

BARFIELD You have an objection to one of the gates that was proposed. Would it be feasible to put in an electronic gate at that location?

HALL That was what the DAB concept was that the gate would be electrically controlled, but if you are in the facility, and we have a 14-foot wall and a 14-foot solid gate, we can't tell who is out there.

BARFIELD What I mean is a sensor that would activate the gate.

HALL We could put video cameras out there so we could see if somebody is sitting out there, but again the truck will have to stop in the roadway. If Drywall's truck is coming up Ohio, they will be mad because a truck is sitting there waiting on our gate to open.

BARFIELD On Condition #13 about the disposal of hazardous waste, do you see that associated with this operation?

HALL Those machine tools that come in basically do have cutting fuels and oils in them, and what we intend to do is put a pit in there, and we can pull the oil tank reservoir out and drain it and pump it into a barrel, and most of the oil companies will take that used oil.

BARFIELD No automobiles or trucks?

HALL There will be no automobiles or trucks associated with this operation.

MARNELL You are talking about a decorative solid screening brick pattern. Are you are talking about something like on Kellogg freeway? Will it be something like that?

HALL As far as a barrier fence the most cost effective is a poured in place. They use a rubber-molded panel in that form. I think they did that on Kellogg west of Seneca on the north side of the road.

MARNELL Something similar to that.

HALL Yes.

BARFIELD I want to be sure if this application is approved you will cease operation at the other three locations.

HALL Yes, we will.

DUNLAP What about the fence on the west side?

HALL I think it has to be a solid panel fence?

KNEBEL The code requires that it be a solid screening fence and that would be basically wood, metal panel, or concrete are the options essentially.

HALL We will have to have a gate back there to go over the spur.

MARNELL The entryway on this, what you are saying is that you would have interior walls that would block the line of view from Ohio Street, so the vehicles could come in and turn and access the yard, but someone driving down Ohio could not see into the yard directly?

HALL Correct. If you look on that layout plan, you will notice that we propose that there is a block wall or another poured concrete wall, so if the gate is open and you are driving down Ohio you will see another wall.

TAPE CHANGE Tape 4 side A

JOHNSON Have you looked at other locations for this operation?

HALL Yes, we have looked at other properties along 21st Street and all the way up to Park City. This is the Burlington Northern Industrial Park.

JOHNSON Have you had any meetings with the neighbors in this area?

HALL I have gone by to try and talk with them, but no, we have not sat down and discussed this.

JOHNSON Do you think it would do good to sit down and talk with them. I don't know how you feel about being in a neighborhood where most of the neighbors will not be looking forward to you moving in there.

HALL I think when it is all said and done, I think they will find that we make good neighbors.

BARFIELD Someone mentioned something about dust. How much dust will be associated with this operation.

HALL We don't anticipate a lot of dust in there, especially in comparison to what you had when the concrete plant was in there and they had their crusher. I'm quite sure the folks to the north were sick of that deal. It is a graveled lot.

DUNLAP Are you owner of this lot?

HALL We have purchased this lot.

**MOTION:** To approve subject to staff recommendation and eliminating the last sentence of Condition Number Two which states the gate be closed at all times.

**GIBBS** moved, **MARNELL** seconded the motion.

KNEBEL Remove the entire last sentence or the last portion of that sentence.

GIBBS The last sentence that states the access gate shall provide solid screening and shall match the height, color, and shall have an automatic mechanism that keeps the gates closed except when in use. I guess I could restrict that to the one entrance gate only because the others he said they could be kept closed and then open.

KNEBEL I am confused. You are saying that you don't want solid screening access gates?

GIBBS I don't want the gates to be closed.

KNEBEL So it is the last portion of that sentence then?

GIBBS And we could restrict that to the entrance gate only, because he did state that he could control the opening and closing of the exit gates.

MARNELL Would the motion maker add the decorative portion to the concrete wall?

GIBBS Yes.

MCKAY We spent 20 years getting this area cleaned up, and now we are getting 21st Street cleaned up. I think there are a lot of areas up there that would work just as well. I am wondering if we are not taking one eyesore, and in 10 years from now creating another eyesore. I am not in favor of that location because of the work that has been done there, and the tax money that has been spent getting this cleaned up.

BARFIELD About a year ago we approved an automobile scrap yard there at 25th just east of Broadway. Kamen has a recycling facility there. I don't feel this is out of character with the neighborhood.

WARNER I don't think I have heard a case where every neighbor has come forward, and these are people that have invested millions of dollars and have legitimate good-looking businesses, that everyone of them have come here opposed to this. I see their side, and I can't vote for the motion.

MITCHELL We have said we are in favor of the 21<sup>st</sup> Street Revitalization Plan, and I believe this operation would not be compatible with the aim of that plan. I will not support this application.

GAROFALO I agree. We are investing millions of dollars to revitalization out there. True there are other operations out there, but it seems there should be a better heavy industrial area that an operation like this could go into. I believe this is totally incompatible with the neighborhood.

MARNELL This seems to me that this is the area that you would locate something like this, and you wouldn't locate it in light industrial. It should be in general industrial, and that is what this area is zoned. If we can't put something like this in a general industrial area, I don't know where we will put this.

MCKAY We have people that have established in here that have spent millions of dollars creating their businesses and trying to conform to the plan the City has had and now we have one person coming in here and saying I want it in here because it is in an industrial area.

**SUBSTITUTE MOTION:** To deny the application.

**MCKAY** moved, **GAROFALO** seconded.

BARFIELD I did not hear all this opposition when they were putting in the construction facilities up there.

DUNLAP If you can't put industrial here; this is an industrial area and it is an industrial park. I do not agree that this will be blight on the neighborhood, and we are going to clean up three other areas, which I think we need to clean up.

**SUBSTITUTE MOTION carries 8-5. (GIBBS, BISHOP, DUNLAP, MARNELL, BARFIELD, opposed)**

9. **Case No.: DR05-13** – Request The City of Clearwater seeks annexation of road rights-of-way and lands adjacent to The City of Clearwater

**Background:** On March 22, 2005, the City of Clearwater passed Resolution No. 3-2005 authorizing a public hearing on May 24, 2005 for the purposes of considering the unilateral annexation of two road right-of-way segments, and two tracts of lands located adjacent to the northwest and south limits of the City.

The proposed annexation areas fall within the Small City Growth area around the City of Clearwater, as designated within the Wichita-Sedgwick County Comprehensive Plan *Preparing for Change*, adopted and updated by the Metropolitan Area Planning Commission and the Board of County Commission in 2002.

Kansas statutes require that the planning commission review the proposal and make a finding of compatibility or incompatibility with any adopted land use or comprehensive plans related to the area and the annexing city.

After review by staff, it has been concluded that the proposed annexation areas are consistent with the intent of the Wichita-Sedgwick County Comprehensive Plan.

**Recommended Action:** That the Metropolitan Area Planning Commission find the unilateral annexation proposed by Resolution No. 03-2005 of the City of Clearwater to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan

**Attachments:** Attachment No. 1 - Resolution No. 03-2005 and map.  
Attachment No. 2 - Sedgwick County Development Guide (01/02)

**MOTION:** To approve subject staff recommendations.

**MARNELL** moved, **MCKAY** seconded the motion, and it carried 13-0.

The Metropolitan Area Planning Department informally adjourned at 5:30 p.m.

State of Kansas     )  
Sedgwick County    ) ss

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)

